NOVEMBER/DECEMBER 2010

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1101 Vermont Ave., NW, 11th Floor
Washington, D.C. 20005

Phone: (202) 466-3800
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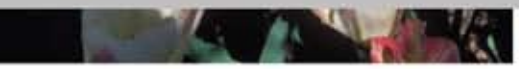

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Reasserting State Sovereignty in Public Lands Management

The Eminent Domain Authority for Federal Lands Act

BY REP. CHRIS HERROD (UT)

Our Founding Fathers recognized that states possessed the power to rein in an overreaching federal government. The principles of federalism and limited government have been emphasized for years by ALEC and are currently being rediscovered by the nation as a whole. Unfortunately, fundamental principles such as the original meaning of the Supremacy Clause found in Article VI of the U.S. Constitution have been distorted. All laws passed by Congress are not supreme, only those laws "made in Pursuance thereof," referring to the U.S. Constitution, especially the Enumerated Powers granted in Article I Section 8 and the 10th Amendment.

Toward that end, Utah passed legislation designed to challenge the federal government's seemingly unlimited authority during the 2010 legislative session. HB 143—Eminent Domain Authority—makes "public land" subject to eminent domain by the state. Since eminent domain authority is not an enumerated power, this authority remains with the state. "Public land" was retained by the federal government when Utah became a state and not acquired under Article I Section 8 (17), known as the "Enclave Clause," so such land is subject to state jurisdiction.

The goal is to force the question: "Who is the sovereign—the state or the federal government?" Sovereignty actually rests with the people, so the question becomes: "To whom did the people give their sovereignty?" A subsequent bill, HB 324, identifies specific land subject to eminent domain, authorizes action based on a breach of Utah's *Enabling Act*, and provides funding to fight the court battles.

> "No free government, or the blessing of liberty can be preserved to any people without a frequent recurrence of fundamental principles." – Patrick Henry

Public Education and Utah's Enabling Act

State *Enabling Acts* are contracts between those in the territory at the time of statehood and the United States government. The contracts cannot be broken by one party. In Utah's case, the federal government has reneged on its promise to dispose of the "public land" within Utah—the results have been costly to the state especially to Utah's school children.

According to Utah's *Enabling Act*, in addition to school trust land given at statehood, Utah schools are entitled to 5 percent of all gross proceeds of public lands "which shall be sold." "Shall" is used consistently throughout the act as meaning "must happen," not "may happen." The value of the energy resources locked up in just the Kaiparowits Plateau in the Grand Staircase National Monument is estimated at over $1 trillion. Five percent of this would be $50 billion. The interest alone could fund Utah's K-12 education, which currently has the lowest funding per pupil in the nation. If the federal government will not honor its contract, then the state of Utah will exercise its sovereign right and eminent domain public land so that Utah's children can receive the full benefit to which they are entitled.

Critics argued that since Utah forfeited its claim to "right and title" of public land in the *Enabling Act*, Utah therefore gave up authority over the land. Such language actually proves just the opposite. Utah did not give up its claim of jurisdiction or sovereignty. By forfeiting "right and title," Utah simply forfeited claim of ownership, which was needed to give clean title to the land. This is often referred to as "proprietary" title and is the same type of ownership that any property owner holds. In contrast, Utah gave up "right, title, and jurisdiction" over sovereign Indian lands within its boundaries.

Equal Footing Doctrine

Under the "Equal Footing" doctrine, all states are to be admitted as equal sovereign states, with no state having more political rights than another. After the Revolutionary War, some of the original states maintained claims on property outside of their states' boundaries but within the territory of the United States. Eventually these states agreed that they would give up such claims through

"state land cessions" for the best interest of the United States on the condition that these lands, as well as future public lands, would be sold for the benefit of the Union and/or the creation of new states. When they did so, they gave up not just "right and title" but "all right, title, and claim, as well as of soil as of jurisdiction."

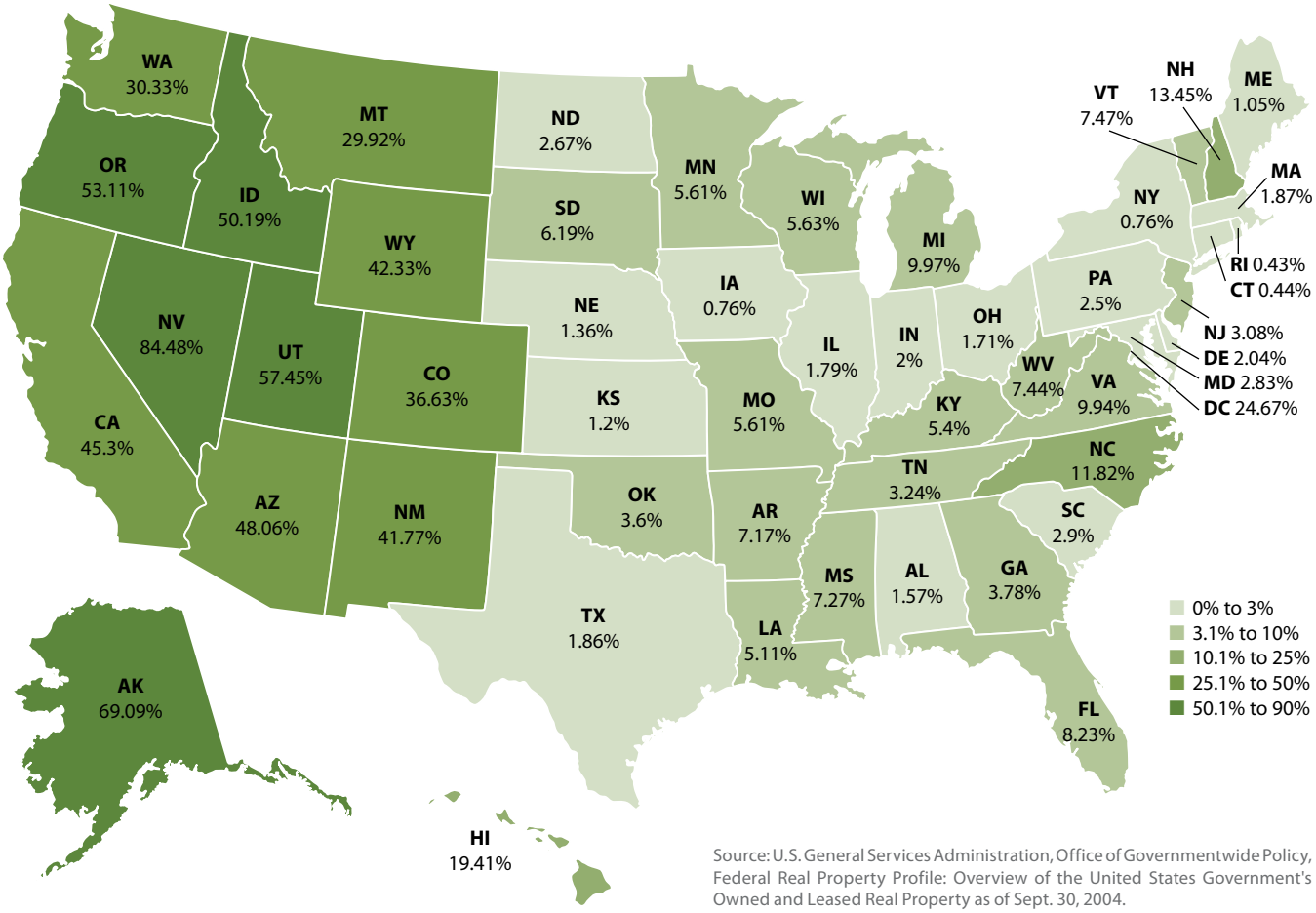
According to records from the Constitutional Convention, our Founding Fathers were aware of the possibility of the federal government exerting "undue influence" on such states if allowed to own or control large tracts of land. In the past, federal land issues were primarily a Western issue, but recent events show that jurisdictional and constitutional issues affect every state. For example, Louisiana never should have had to seek federal permission to build berms to protect its coastline in waters within state boundaries. When the original 13 American colonies received independence from Great Britain, sovereignty of the coastal waters was not reserved to the federal government, but was given to the individual states. The Equal Footing Doctrine dictates that if the original colonies had sovereignty over coastal waters, Louisiana should as well.

Various 10th Amendment groups and Members of Congress, such as Rep. Rob Bishop of Utah, have organized efforts to refocus on the 10th Amendment in an attempt to rein in the federal government. The question becomes what issue represents the best case to force this issue. In Utah, we believe that eminent domain, the Equal Footing doctrine and a breach of enabling acts are the best way to do this. We invite all states to pass legislation similar to the model legislation that ALEC adopted at the 2010 Annual Meeting as the *Eminent Domain for Federal Lands Act*.

If ever there was time for state legislatures to jealously guard against encroachments from healthcare, to land use, to cap and trade—it is now. Please join Utah as we reassert our rights—for Utah cannot accomplish this alone. Join us as we reclaim our sovereignty and fight to limit the federal government to the enumerated powers given in Article 1, Section 8. States alone possess the ability to rein in the federal government and therefore save our republic. United we can succeed. ■

Rep. Chris Herrod represents the 62nd district of the Utah House of Representatives. He is a member of the ALEC Public Safety and Elections and the International Relations Task Forces.

Percentage of Federally Owned Acreage, by State



Source: U.S. General Services Administration, Office of Governmentwide Policy, Federal Real Property Profile: Overview of the United States Government's Owned and Leased Real Property as of Sept. 30, 2004.

A Look into the 2011 Legislative Cycle

ALEC Policy Initiatives in the States

BY ALEC Policy and Public Affairs Team

The American people spoke loudly on Nov. 2 with unprecedented changes in federal and state legislatures. With this change comes an incredible opportunity to look at policies and agendas with a fresh new outlook. Voters sent a clear message that they didn't like the way the federal or state governments were operating.

With the U.S. House committed to getting spending under control, this presents an atmosphere to return to the principles of Federalism and have a proper balance between the federal and state governments. There will be opportunities for more decisions to be made closer to the people and institute real reform and solutions through the state legislatures.

Following is a compilation of ALEC policy solutions for budget crises, education, health care, and other issues that are affected by and significantly affect budgetary spending in addition to improving the economy.

State Fiscal Policy

- ALEC's publication *Rich States, Poor States* provides fiscal solutions for the states.
- With the focus on prioritizing spending and creating jobs, this guide to fiscal solutions will help state legislators balance their budgets, while keeping their states competitive.
- Switching to defined contribution (401k) pension plans for new state workers should get lots of traction. Spending caps and priority-based budgeting will be on the rise.
- Many states have realized the value of budget transparency and have created searchable online budget databases based on ALEC model legislation. Transparency is a vital tool to build greater accountability in state budgets and addresses the growing public desire for fiscal responsibility.

Health Care

- Among the many historic election results on Nov. 2, two of three *Freedom of Choice in Health Care Act* ballot measures—in Oklahoma and Arizona—were resoundingly approved by the American people.
- In a huge push for health care freedom, this year 42 states have either introduced or announced that they will introduce ALEC's *Freedom of Choice in Health Care Act*. Six states (Virginia, Idaho, Arizona, Georgia, Louisiana, and Missouri) passed the ALEC model as a statute, and two states (Arizona and Oklahoma) passed the model as a constitutional amendment. An active citizen initiative is also underway in Mississippi.
- We expect that ALEC's *Freedom of Choice in Health Care Act* will continue to be an essential state legislative tool in 2011 and beyond.

Education

- ALEC recently released its *Report Card on American Education*, which provides many proven, successful solutions for education reform.
- Studies show that increasing education budgets is not enough for successful change.
- Many of the suggested solutions do not utilize funds or do not affect state budgets.
  - Create scholarship tax credits, which allow individuals or corporations to receive tax credits for funds they donate to scholarship-granting organizations. Typically, these scholarships are set at a level well below what it costs a district to teach each student—saving both the district and taxpayers money, while allowing parents to decide which school best suits their child.
  - Allow for more charter schools. This is especially true for those 11 states that currently don't have any. Charter schools are funded in a way consistent with traditional public schools, but have the freedom to innovate in ways not available to those schools, such as allowing for longer school days, or by utilizing targeted curriculum like science and technology.

Cap & Trade/EPA Regulation of Greenhouse Gas Emissions

- We are likely to see coordinated legislative pushback on EPA efforts to regulate greenhouse gas emissions and future efforts at a national cap-and-trade program.
- Texas, Arizona, Wyoming, and other states have already staked out ground in opposition to EPA for legal and statutory reasons.
- There is a good chance that, as soon as EPA releases their policy guidance, state legislatures will begin questioning their interpretation of what constitutes "Best Available Control Technology" for limiting greenhouse gas emissions under the Clean Air Act.

Regional Climate Initiatives

- Member-states of the Regional Greenhouse Gas Initiative, the Midwestern Greenhouse Gas Reduction Accord, and the Western Climate Initiative will likely question their

states involvement in a regional cap-and-trade scheme that reduces competitiveness and risks sending industry to other states or nations.
- Utah and Arizona have already taken steps on this front, and several states have failed to pass implementing legislation to carryout the existing regional climate initiatives.

Positive Environmental Actions
- States will likely seek ways to reform and streamline the regulatory processes for existing and future environmental programs. This may include requirements of economic impact statements, applying cost-benefit analysis to climate expenditures, and eliminating duplicative state, regional, and federal programs.
- Additionally, states seem likely to try to incentivize private environmental action, including reducing liability for voluntary reclamation of environmentally-hazardous areas or carbon sequestration projects.

Tort Reform: Reforming medical liability laws to quell the practice of defensive medicine will be a key component to tort reform. Outside of medical liability, tort reform seeking to lessen burdens on businesses will also be popular. We may see a trend of legislation being introduced to keep excessive and frivolous lawsuits from shifting funds out of the business economy.

Union Transparency: State legislators may increase the transparency of union negotiations in their state with the following solutions: include the employee's right to vote by private, secret ballot elections in state constitutions and law and support policies that call for public-sector collective bargaining sessions and documents to be made open to the public. (i.e. ALEC's model bills: "*Resolution to Support State Efforts to Protect Secret Ballot Elections*" and "*Public Employee Bargaining Transparency Act*.")

Justice Reinvestment: Corrections is the second fastest growing budget item behind only Medicaid at more than $50 billion a year nationally. Cut costs in your state and maintain public safety by supporting policies that save money, and then reinvest a portion of those funds into targeted services such as intervention, treatment, education, and intense supervision. Four ALEC model bills work together to reduce recidivism, lower costs, reinvest costs, and focus resources on high-risk offenders ("*Recidivism Reduction Act*," "*Swift and Certain Sanctions Act*," "*Community Performance Incentive Act*," and "*Community Performance Measurement Act*").

Private Sector Bail Operations: Reduce recidivism and cut costs for your state by trusting in the proven-effective private sector bail operation. Rather than releasing offenders through taxpayer-funded pretrial release agencies, rely on the private-sector solution. Support policies that limit the offenses that may be released without commercial bail and policies that place newly-released offenders under the supervision of commercial bail agents who have the incentive to ensure those released maintain employment, receive treatment, and show up for court (i.e. ALEC's model bills: "*Crimes with Bail Restrictions Act*," and "*Conditional Early Release Bond Act*").

Reducing Prison Populations & Increasing Community Safety: ALEC supports smart-on-crime policy that effectively reduces prison populations and keeps communities safe. Rather than building new prisons, legislators may lead the fight to invest funds in community treatment for alcoholism, drug addiction, and mental health treatment. Policies should focus on reducing prison populations, rehabilitating offenders, and reducing recidivism.

Economy & Trade: Ninety-five percent of the world's consumers live outside U.S. borders. The most effective way to increase American exports is through free trade agreements (FTAs). According to the Chamber of Commerce, total trade of U.S. exports worldwide were $462.7 billion higher than they otherwise would have been because of the FTAs we currently have in place. The current FTAs support 5.4 million jobs and U.S. merchandise exports to FTA partners grew nearly three times as rapidly as did our exports to the rest of the world between 1998 and 2008. FTAs disproportionately benefit small to medium sized companies the traditional incubators for U.S. job creation.

ALEC has resolutions supporting free trade frameworks with: Colombia, Panama, Trans-Pacific Partnership (New Zealand, Australia, Brunei, Singapore, Chile, Peru, Vietnam), Taiwan, Georgia, and Indonesia. In December we are likely to have one supporting the Korea-U.S. FTA. Statistics show that states do benefit from FTAs.
- Arkansas, where exports increased 103% from 2000 to 2009, sends nearly 40% of its exports to countries with which we have free trade agreements [U.S. Trade Representative Report].
- In North Dakota, exports sustain one-seventh of all manufacturing jobs, and foreign companies employ 8,300 people in the state [*Boston Globe* article by Jeff Jacoby 1/10/2010].
- In Georgia, companies that engage in international trade grow on average 18% faster than those that do not [Georgia Department of Economic Development Website].
- Kansas's export shipments of merchandise in 2009 totaled $8.9 billion. Of Kansas's total exports, $5.3 billion, or 60 percent, went to markets in the Asia-Pacific region. ■

ALEC EVENT FOR *RICH STATES, POOR STATES* REPORT

Utah Governor Gary Herbert Headlines

In August, over 100 people from the Utah Legislature and the local business community gathered to celebrate Utah's top economic outlook ranking in the 2010 edition of ALEC's *Rich States, Poor States* and highlighted the state's successful state economic reforms. ALEC State Chairs Sen. Curtis Bramble and Sen. Wayne Niederhauser organized this *Rich States, Poor States* event with ALEC Private Sector Chairs Jay Magure from 1-800 Contacts and Steve Proper from Comcast.

Gov. Gary Herbert (R-UT), who wrote the foreword in *Rich States, Poor States*, began the event by emphasizing the need to continue pro-growth economic reforms. The governor stressed that other states can benefit from learning about Utah's experiences.

Senate President Michael Waddoups and Speaker David Clark briefly shared about Utah's policies that earned the state the top economic competitiveness ranking in the nation. Utah's generally lower taxes, limited government, and strong labor policies greatly contributed to the state's exceptional economic outlook.

Jonathan Williams, Director of ALEC's Tax and Fiscal Policy Task Force and *Rich States, Poor States* co-author, ended the event by summarizing the key to Utah's economic success. "Utah's competitive business climate has become an example for the other 49 states as they look to recover from the national economic downturn and encourage business development. We can all learn from Utah's efforts to ensure government is transparent and accountable as it lives within its means," said Williams.

Co-authored by Dr. Arthur Laffer, the "father of supply side economics," Stephen Moore of *The Wall Street Journal* and Jonathan Williams, Director of ALEC's Tax and Fiscal Policy Task Force, *Rich States, Poor States* analyzes how economic-competitiveness influences economic growth in the states. ■

Host an Event

To host a *Rich States, Poor States* event in your state, please contact Jonathan Williams at (202) 742-8533 or jwilliams@alec.org.

ALEC Weighs in on Federal Health Reform at Capitol Hill Hearing (July 2010)

On July 15, HHS Task Force Member and Maryland Delegate Addie Eckardt testified at "States of Disaster: Challenges in Responding to ObamaCare," a Capitol Hill hearing sponsored by the GOP Health Care Solutions Group and America Speaking Out. Delegate Eckardt's testimony, "A Legislator's Perspective on Health Care Reform: Implications for States," was followed by testimony from Florida Deputy Attorney General Joe Jacquot and Louisiana Secretary of Health and Hospitals Alan Levine. For information about this event, visit the GOP Health Care Solutions Group website.

Energy Tax Proposals Threaten Jobs and Economic Recovery

BY JOHN STEPHENSON

There is a troubling development in the world of energy policy. From Sacramento to Harrisburg, state legislatures have put forward proposals to enact new or higher taxes on energy production to finance their spendthrift ways. Not to be outdone, the U.S. Congress has sought to get in on the money grab by considering a proposal to collect more revenue from energy producers that would feed its own overspending habits.

To help paper over California's $19 billion budget deficit, earlier this summer the state's Senate and House leaders proposed a new $1.1 billion severance tax on oil production as part of their budget plan. Just as troubling, they hoped to enact their scheme by employing a deceptive maneuver that would allow them to circumvent the State Constitution's two-thirds supermajority legislative vote requirement for tax increases.

But proponents of this energy tax fail to grasp that it amounts to a job killer in a state that can ill-afford to worsen its unemployment problems. Steve Burns of Chevron, the largest oil company in California, says his company provides 10,000 jobs in California and supports another 60,000. The severance tax, he notes, is a punitive tax that would put California producers at a competitive disadvantage, forcing them to invest elsewhere and take the jobs with them.

The new severance levy could also deprive local governments of property tax revenue, as oil producers leave the state and property values fall. Moreover, consumers could suffer higher prices at the pump, as companies pass on the increased cost of doing business.

Pennsylvania also appears intent on punishing its energy sector with a new tax on natural gas. In search of revenue to address budget swings of their own making, the growing cost of public education wish-lists, and transportation funding demands, Commonwealth officials have put natural gas extracted from the Marcellus Shale into the tax crosshairs. Legislators talk gleefully about the many ways they will spend the money.

But lost in all of the talk about what to do with the new windfall is any appreciation for what a high severance tax on natural gas production would do to development of the Marcellus Shale. Production of the shale has created 44,000 jobs and about $1.4 billion in tax revenues for the state already. A new, high severance tax would put these jobs into jeopardy.

A study by Pennsylvania's Commonwealth Foundation has determined that states with lower or no severance taxes have experienced more growth in their energy sectors than those with higher such taxes. For example, as of last month, there were 60 horizontal rigs operating in Pennsylvania's portion of the Marcellus compared to 16 in West Virginia's. Considering that Pennsylvania has no severance tax and West Virginia has a higher rate, this is not a coincidence.

For its part, Congress has considered repealing a credit that offsets taxes paid to other countries as well as repealing a commonly available manufacturers' deduction—but only for the oil and gas industry. Lawmakers backing this shakedown say that oil and gas companies are somehow taking advantage of a "generous Tax Code," even though the opposite is true. These two provisions help to offset the burdens and high rates that are hallmarks of a flawed U.S. corporate tax system. Like bad pennies, these proposals may be back in circulation when Congress returns to session after the election.

Repealing the credit amounts to a "double tax" for energy companies. Moreover, because the change hits American-based companies hardest, foreign state-owned firms like Venezuela's Citgo and China's CNOOC will effectively receive a competitive edge. Furthermore, without the manufacturers' deduction, oil and gas companies will not have as much to reinvest into jobs. Repealing these tax provisions would throttle back our vital economic engines and give the green light for Congress to heap punitive taxes on other selected sectors of the economy.

Increasing taxes on energy will not solve states' fiscal woes; nor will doing so on the federal level provide a more even playing field for companies. In the midst of a fragile economy, the last thing the states or Congress should do is raise taxes, and with them raise the risk of shattering a recovery. ■

John Stephenson is State Government Affairs Manager for the 362,000-member National Taxpayers Union, a nonprofit, nonpartisan citizen group founded in 1969 to work for lower taxes, smaller government, and economic freedom at all levels. He is a member of ALEC's Energy, Environment and Agriculture Task Force.

A Tax in Sheep's Clothing

How Extended Producer Responsibility Mandates Can Hurt Consumers and Business

BY JENNIFER MENDEZ

There is a growing trend in many states to find new and useful ways to reuse many consumer items that have been thrown away. There are a number of names for these activities: take-back programs, extended producer responsibility (EPR), and product stewardship. Call it what you will, it could be coming to your state in the upcoming legislative session.

As defined by the U.S. Environmental Protection Agency (EPA), "Product stewardship is a product-centered approach to environmental protection. It calls on those in the product lifecycle—manufacturers, retailers, users, and disposers—to share responsibility for reducing the environmental impacts of products."

In light of an upcoming workshop to be held during ALEC's States & Nation Policy Summit, a quick primer on the issue might be useful.

Some states have already introduced "framework legislation" to mandate programs and place the cost burden of end-of-life products onto the producer. Product Stewardship is not a principle for merely shifting costs for product end-of-life management to producers. If producers establish end-of-life management programs for their products, they are being proactive in their product stewardship and are usually employing efficient, market-based systems, not financing and operating government-dictated programs.

Government directed Framework Product Stewardship (PS) or EPR programs use a one-size fits all approach to extended producer responsibility by creating state government bureaucracies and mandated program elements. This tactic ignores the cost and environmental benefit envisioned by some existing PS/EPR programs. There are needed programs that deal specifically with hazardous waste. But all waste is not hazardous and should not be treated as such.

Broad "Framework EPR Programs" as currently developed are open-ended, unclear, and most likely will increase state cost for management by state agencies, which in turn adds costs to the consumers and manufacturers. State agencies would bear the cost to study and prioritize products, review and approve plans and reports and to audit for compliance and enforcement. Consumers will pay more for products and manufacturers will be forced to finance government-mandated programs, and of course the cost of doing so will be passed on to the consumers who purchase the products.

Why not look at encouraging market-based solutions to product stewardship, especially for those products which don't pose a toxic hazard to the environment? A number of industries already have voluntary recycling programs in place. They have increased their recycling efforts, not because of mandates, but because it makes good business sense. Programs under "framework legislation" would add a level of complexity that may not be needed. Government-mandated "Framework EPR Programs" ignore market-driven recycling programs, which are the most efficient means of collecting and reusing product materials at the end of a product's useful life-cycle.

"Framework EPR Programs" ignore consumer behavior when dictating program elements. Will a consumer actually bring a product back instead of throw it away? Consumer behavior is the main key to make any collection program feasible and cost-effective.

One of the very real concerns is that "Framework EPR Legislation" typically tries to hide the cost to the consumers by stipulating that there shall be no "visible" fee allowed by brand owners or manufacturers (at point of sale) to pay for mandated programs—disregarding a potential valuable avenue to educate consumers.

In a struggling economy, these types of programs do not encourage product makers to locate, expand, or re-invest in any state or create jobs. Market-driven programs are the key to addressing end-of-life collection and job creation. From batteries to motor vehicles to carpet, these industry programs have served an essential role in providing sustainable solutions for concerns about waste. ■

WORKSHOP

ALEC States & Nation Policy Summit

Dec. 3, 2010 | 11:00 a.m.

Grand Hyatt in Washington, D.C.

"A Tax in Sheep's Clothing: How Extended Producer Responsibility Mandates Can Hurt Consumers and Business"

For more information, contact Clint Woods: cwoods@alec.org or (202) 742-8542

Jennifer Mendez is Director of Government Affairs for the Carpet and Rug Institute and Chair of ALEC's Environmental Health & Regulation Subcommittee. She is a member of ALEC's Energy, Environment, and Agriculture Task Force.

Too Many Cooks in the Product Safety Kitchen

BY CLINT WOODS, Director, ALEC Energy, Environment and Agriculture Task Force

State and local governments have continued to target a beneficial group of chemicals known as phthalates for additional misguided restrictions despite the enactment of the *Federal Consumer Product Safety Improvement Act* (CPSIA) in late 2008 and a number of scientific studies suggesting the error of their ways. Phthalates (pronounced THAL-ates) are plasticizers that are used to make plastics more flexible and durable for use in a variety of products, from medical devices and pharmaceuticals to adhesives and food packaging.

With the passage of CPSIA, Congress noted differences between low molecular weight and high molecular weight phthalates. The law requires the Consumer Product Safety Commission (CPSC) to carry out permanent regulation on children's toys (12 years of age and younger) and child care articles (age three and younger) that contain more than 0.1 percent of three different low-molecular weight phthalates (DEHP, DBP, and BBP). For high-molecular weight phthalates (DINP, DIDP, and DnOP), the bill created a temporary, short-term restriction on toys and articles that can be placed in a child's mouth. It also required the Commission to convene a Chronic Hazard Advisory Panel to study the health effects of all phthalates and phthalate alternatives. The panel's findings will provide the most-recent and comprehensive information for a final CPSC decision on this class of phthalates.

For state lawmakers, the specific provisions of the CPSIA and truckloads of scientific evidence about phthalates are less important than the reality that the CPSIA expressly preempts state and local statutes. The CPSIA mandates preemption of a state or local law that is not identical to the federal standards for both classes of phthalates. The statute considers both the permanent and temporary phthalate restrictions as consumer product safety standards under 1972's *Consumer Product Safety Act*, which, in turn, prohibits states and municipalities from establishing requirements on the same substances as the federal standard.

In spite of this explicit preemption of additional state restriction on both high- and low-molecular weights phthalates, nearly a dozen states, from Arkansas to Hawaii, proposed phthalate-specific bills in the 2009/2010 session. Additionally, several counties and municipalities (including the District of Columbia and New York City) have proposed additional phthalate standards and more than 20 states offered bills that would result in regulation of multiple chemicals in children's products and toys.

While there are many reasons to question the various provisions of 2008's CPSIA, there was value in providing a single, predictable standard for phthalates. A patchwork of standards by state and local governments, many of which are not based in sound science, sends mixed signals to consumers as well as businesses throughout the supply chain. This strategy also risks unnecessary duplication and diminishing of local safety resources. More burdensome phthalate restrictions may also cause a shift to less studied alternatives that may result in additional health and product performance issues.

In addition to the obvious legal case against duplicative state efforts against phthalates, there is also a strong scientific argument against legislatures rushing ahead on this issue. Beyond the more than $10 million that high molecular weight phthalate producers have spent on safety testing and the decades of use without any signs of human harm, there are also a slew of government studies that suggest regulatory caution. The National Toxicology Program saw "minimal to negligible" safety concern for certain phthalates to cause reproductive or developmental harm. Multiple reports by the Centers for Disease Control found that trace levels of high

molecular weight phthalates in humans are well within safe limits. A previous Chronic Hazard Advisory Panel studied the high molecular weight phthalate DINP—one of the most commonly used phthalates in toys—and found the injury risk to be "minimal to nonexistent." Even after the CPSIA passed, a CPSC scientist asserted that "We could not ban DINP because there was not a risk of injury to children." Even the risk-averse European Union assessed that DINP "is unlikely to pose a risk for consumers (adults, infants and newborns) following inhalation, skin contact and ingestion" in 2006.

In light of the clarity provided by the *Consumer Product Safety Improvement Act* as well as years of scientific evidence, states should think twice about pushing ahead on misguided product safety standards. ■

The Demise of the Western Climate Initiative

BY BRYAN WEYNAND, Legislative Assistant, ALEC Energy, Environment, and Agriculture Task Force

The failure of cap-and-trade at the federal level, combined with November's electoral shifts, has created momentum for a free market energy movement, which is now turning its attention to one of the only hopes for those seeking widespread restrictions on greenhouse gas emissions in the United States: regional climate initiatives.

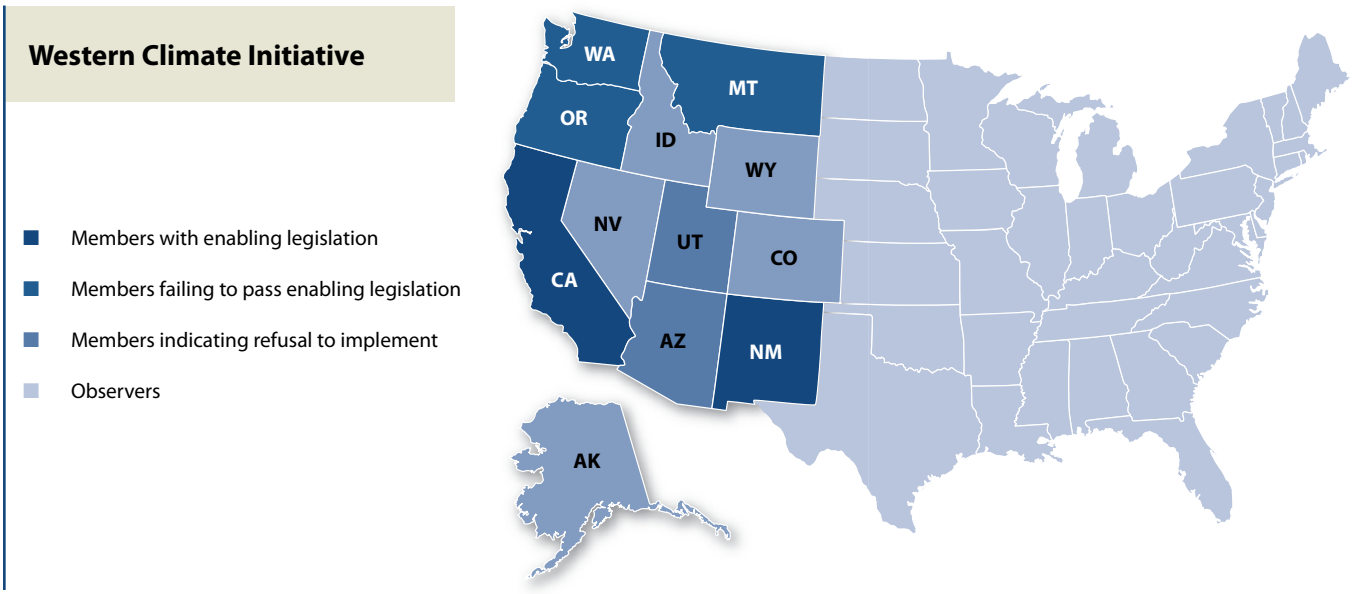
At present, there are 23 member-states and nine observer-states associated with one of three multi-state compacts designed to restrict climate emissions on a set timeline. The agreements, including the Regional Greenhouse Gas Initiative (focused on the Northeast), the Midwestern Greenhouse Gas Reduction Accord, and the Western Climate Initiative, amount to state-level manifestations of the failed Kyoto Protocol, developed and agreed upon by the governors of each state without necessary legislative authorization and implementation.

The second most advanced regional pact, the Western Climate Initiative (WCI), has already begun to unravel. Once trumpeted as a state-level success where the federal government had yet to act, the agreement seems destined instead to become an example of failed expectations and the backwardness of an executive branch-driven, cooperative effort to achieve unrealistic goals.

The WCI establishes a goal of a 15 percent reduction in greenhouse gas emissions below 2005 levels by the year 2020. The program envisions a regional cap-and-trade program, carbon offsets, and a series of complimentary programs such as low carbon fuel standards to accomplish this goal. When originally conceived, its members included Arizona, California, Montana, New Mexico, Oregon, Utah, Washington, and four Canadian provinces. Idaho, Nevada, Colorado, and Wyoming joined as observers.

As it approaches its target date of 2012 for beginning implementation, the coalition is exposing its fragility rather than inspiring confidence in the green agenda. Every member state, with the exception of California and New Mexico, has explicitly or implicitly abandoned the implementation of this agreement. Facing economic hardship, combined with public pressure against unnecessary environmental costs, states of all political stripes have reassessed their involvement with the WCI. A 2009 study by the Beacon Hill Institute estimated that this pact could cost as many as 250,000 lost jobs for the member states and a $1.5 billion reduction in private investment.

Finding that "imposing costs on Arizona's economy associated with a GHG cap-and-trade system… would cost investment and jobs in Arizona and put Arizona at a competitive disadvantage without effectively addressing what is a national and global issue," Arizona Governor Jan Brewer announced in February an executive order that Arizona



would not participate in the program, reversing the decision of previous governor Janet Napolitano. Brewer also announced that her executive branch would not implement the program under any circumstance, and the legislature passed a bill prohibiting any state agency from implementing any greenhouse gas regulation. Cap and trade, at least in Arizona, will require legislative authorization.

Utah Governor Gary Herbert has made similar remarks about his state's involvement with the agreement—he will allow his state to remain in the group, but he is not pushing for implementation. Utah's legislature passed a resolution urging Herbert to withdraw from the initiative. This resolution serves as the basis for ALEC's model resolution *State Withdrawal from Regional Climate Initiatives*.

In Oregon and Washington the governors' offices and legislatures are Democratic and the political climate is much more favorable to the green agenda. In both states, however, the legislatures attempted but failed to pass legislation in 2010 enabling the implementation of the program. These two states will also miss the 2012 start date of permit trading, rendering the only two states with enabling legislation, California and New Mexico, as the fringe minority.

An agreement that began with noble proclamations from a series of cooperating governors is now seriously lacking in solid footing as it attempts to move from loosely binding executive accord to implementation. From the start, the strategy of the agreement was far from realistic.

The regional climate initiatives are based on the premise that setting targets and building centralized political coalitions is the desirable way to achieve the goals of reducing greenhouse gas emissions. This premise is debunked by a far more valid observation: such coalitions lack legitimacy and individual states have no incentive to pursue emissions targets that exceed their realistic constraints.

Many states were driven into these regional pacts with an expectation that a federal carbon trading scheme was inevitable and that gaining experience on a more limited basis would offer their states a leg up. However, with a national cap-and-trade program increasingly unlikely, states have every reason to get out of economically-damaging climate initiatives.

The green movement aims to accomplish with political will what the market will not. Political will can muster an agreement if it is little more than a public relations stunt declaring a commitment to arbitrary standards. But only in the fantastical vision of the green movement can political will plan an economy, and this vision is fast learning that individual governors will attach their state's name to the initiative so as not to miss out on the fanfare, but that legislatures will not implement an agreement that would inflict such drastic consequences on their constituents.

Market-driven technological developments have a far better record at achieving lower emissions, and they have a much more realistic chance of achieving these reductions in the future. If you are interested in introducing a resolution respecting your state's regional climate initiative, or in introducing legislation to repeal a state cap-and-trade program, please contact ALEC's Energy, Environment, and Agriculture Task Force. ■

LEGISLATOR SPOTLIGHT

Transatlantic Climate Lessons

An Interview with Member of the European Parliament Roger Helmer

Roger Helmer has been a Member of the European Parliament (MEP) since 1999 representing the United Kingdom's East Midlands region. He is an International Legislator member of ALEC's International Relations Task Force.

A number of surprising developments have taken place in the field of climate science in the last year—from Climate-Gate to controversies involving the methodology of the Intergovernmental Panel on Climate Change (IPCC) as well the head of the IPCC, Rajendra Pachauri. What should an average citizen take away from these recent developments about the scientific case for man-made carbon dioxide emissions as a prime contributor to global warming?

The case for man-made global warming is rapidly unraveling. It is increasingly clear that the IPCC, far from being "the consensus view of 2,500 climate scientists" is in fact driven by a small, tight-knit group of around 30 people, sometimes described as "The Hockey Team" (after Michael Mann's discredited "Hockey Stick Graph" which featured prominently in the third IPCC Report). This small group of scientists collaborated together, co-authored papers, peer-reviewed each other's work, sought to suppress alternative views and to subvert the peer-review process, and sought to sideline or sack editors of learned journals who published dissenting views. They dominated the IPCC report process and especially the Summaries for Policy-Makers (the only part usually read by politicians and journalists). The IPCC is revealed as an advocacy group, not a disinterested scientific panel. Much of its "peer reviewed science" proved to be no more than "grey literature"—propaganda publications from ultra-green groups.

Meantime we're seeing a Watergate-style "follow-the-money" saga in terms of the business interests of Railway

Engineer Dr. Rajendra Pachauri, head of the IPCC, and of other leading climate-alarmist figures like Al Gore.

What has Europe's experience been with their mandatory Emissions Trading Scheme? Are there any lessons the United States should heed when considering cap-and-trade proposals?

The EU's Emissions Trading Scheme is the worst of all possible worlds. It has introduced manifold biases and anomalies into European economies. It has reduced competitiveness, and driven industries offshore. It has been compounded by the UN's "Clean Development Mechanism," which has transferred huge sums to Russia and China without doing anything significant for the environment. I am struck by the fact that the overwhelming majority of economists and senior business people I talk to believe that if we must reduce CO2 emissions, then a straight carbon tax would be hugely more efficient, more inclusive, more consistent, more predictable, and more effective than Cap'n'Trade. My advice to America on Cap'n'Trade: Don't do it!

How has the election of David Cameron affected Britain's approach to the environment and climate change?

Sadly, not very much. The Conservative Party is still wedded to Climate Alarmism, and our new Coalition Climate and Energy Secretary, Chris Huhne (a former Liberal-Democrat Euro-MP) is passionately green. Until recently he was a strident opponent of nuclear power, although in office he has been forced to back-track a little. But he is still bent on a massive wind energy programme, aiming for up to 30 percent of UK electricity generation by 2020. This plan is unachievable and vastly expensive. It will be disastrous for the competitiveness of British industry, and it creates a serious risk of major power outages by 2015.

In September, the UK became the world leader in offshore wind energy by opening the heavily-subsidized Thanet wind farm in the North Sea. What do you think is the role of government in promoting certain forms of energy? What is the likely impact of additional offshore wind generation on electricity prices?

Our energy Secretary Chris Huhne has grudgingly admitted the need for new nuclear capacity, but insists "There will be no government subsidy for nuclear." That's a good principle, but he should also apply it equally to wind power—in which case not a single new turbine would be erected. We're technically looking at subsidies from electricity users rather than the tax-payer, but either way these subsidies are massively damaging and likely to increase electricity prices between 30 and 50 percent by 2020. Meantime France continues to enjoy low-priced nuclear electricity. Huhne seems blissfully unaware of the need for conventional back-up for intermittent wind—which will massively increase its costs.

In what ways do you think EU integration has affected European policies on energy and environmental issues, and, in turn, what lessons does that experience indicate about a transnational climate regime following the Kyoto protocol?

In theory we are supposed to have a common EU energy policy. But although most member-states still pay lip-service to the Great Climate Myth, in practice the EU was unable to reach a common position at Copenhagen—one of the key reasons that Copenhagen failed. The European Commission is arguably more deeply committed to the climate issue than any other government in the world—to the huge detriment of European economies. My own view is that neither China nor India will be prepared to offer a deal in Cancun that would be acceptable to the USA, and I don't think that President Obama, who will be damaged by the mid-term elections, will be able to deliver American commitment to a global climate régime. I appreciate alliteration, and I note that Copenhagen and Cancun start the same way—I think they'll end the same way.

You have been a leader in helping to develop a counter consensus on climate change with participation from scholars and legislators from both sides of the Atlantic. How have you gone about bringing interested groups together?

Thanks for the kind words! I've made a point of writing, speaking, blogging and Tweeting on the issue. I've read about the issue at length (there are some excellent books about it). I've published a book and a DVD on climate, and organized two conferences in the European parliament—the first in April 2007. And I've been corresponding with some of the key players. I'm currently scheduled to meet the Climate Research Unit at the University of East Anglia next month, and to go to Cancun in December. It's been easy to stand out on this issue since so few politicians are prepared to put their heads above the parapet—though a surprising number agree privately.

What role do you see for forums like ALEC's International Relations Task Force (IRTF) in bringing together like-minded decision makers from around the world—especially, as IRTF widens its geographical scope to include leaders from Asia, the Pacific and Latin America?

The few organizations committed to a rational view of the climate issue have a big role to play (I've attended two of the Heartland Climate Conferences in the USA). I believe there is a big opportunity for ALEC to take the debate forward in the IRTF—and I should be delighted to do what I can to help. ■

A Good Investment

Dividend tax relief helps shareholders, capital spending, and electricity rates

BY MARTIN L. SHULTZ

The nation's electric companies, Chambers of Commerce, trade associations, and many others are strongly urging Congress to prevent a massive tax increase that will have detrimental impacts on investment, jobs and the recovering U.S. economy.

In 2003, Congress passed a law that *temporarily* reduced the maximum tax rate on dividend income from almost 40 percent to 15 percent. The lower dividend tax rate is especially important for electric companies, which paid out $17.1 billion in dividends to shareholders in 2009 and had the highest payout ratio among all U.S. business sectors.

Unless Congress acts soon, the current dividend tax rates will expire on December 31—causing them to soar by as much as 164 percent for some taxpayers next year. Today's tax rates on dividend income are good for investors, the recovering U.S. economy, and dividend-paying companies such as electric and natural gas utilities.

Raising taxes on dividend income could reduce all shareholders' stock value, create a disadvantage for dividend-paying companies, and reduce the level of dividends paid to companies' shareholders. The lower dividend tax rate also helps electric companies to attract new shareholders, and by attracting new investment, companies like mine can raise the capital needed for financing major new infrastructure investment projects.

Today, the electric industry's capital spending is approximately $80 billion per year—about twice the amount spent in 2004. This money is financing our transformation to a low-carbon future. It's building advanced power plants to meet customer energy needs. It's constructing major transmission and distribution system upgrades, including Smart Grid technologies. It's funding further environmental and energy-efficiency improvements.

These capital investment programs also create an important source of much-needed, high-quality jobs in many states. These investments are helping to put America back in the lead of global clean energy economy. Importantly, lower-cost financing also is essential for keeping electric rates down for the millions of homes and businesses the electric power industry serves.

Should the current dividend tax rates expire, the maximum tax rate on dividend income will skyrocket—almost tripling for certain investors. The maximum tax rate on capital gains income will increase only from 15 percent to 20 percent.

This will create a tax policy that favors growth stocks and debt investments over dividend-paying investments. That is because more affluent investors likely would retreat from stocks that pay dividends in favor of other investments with a lower tax burden.

Such a trend would erode the share prices of many dividend-paying companies, whose stocks are held by working families, retirees, and others who rely on those investments for steady dividend income. That is why maintaining parity between the tax rates for dividends and capital gains is critical.

Utilities generally raise capital through a balanced approach of both debt and equity. A high dividend tax rate can make it harder to keep the appropriate balance in place. The bottom line: higher dividend tax rates and lower shareholder equity values hurt investors and utilities alike and may make it harder for the utility to ensure reliable service at the lowest possible rates.

Today's dividend tax rates also benefit more than 27 million Americans, from all income levels and age groups, who directly own stocks that pay dividends. In addition, tens of millions of Americans own stocks indirectly in or through mutual funds, life insurance policies, IRAs, pension funds, or 401(k) plans.

Extending the current dividend tax rates will encourage long-term investment in our nation's economy and future. Companies and shareholders make their investment decisions with an eye toward the future. They know that Congress has acted twice in recent years to keep the tax rates on dividends at their current levels, so a tax increase likely is not fully reflected in current stock valuations. This raises the possibility that financial markets and our nation's economy will suffer further if Congress raises tax rates on dividend income. Coming off one of the worst economic periods since the Great Depression, this is not the time to discourage Americans from investing in dividend-paying companies by raising their taxes on dividend income.

Between now and the end of the year, all ALEC members should be intensifying efforts to ask Congress to stop a dividend tax hike. Please check out the web site, www.DefendMyDividend.org, to help mobilize all Americans in support of this mission to extend lower dividend tax rates.

Our economic recovery is fragile. We need tax policies that will promote our recovery. Raising taxes on dividends could discourage individuals and businesses from saving and investing in common stock. We urge you to help maintain today's tax rates on dividend income. ■

Martin L. Shultz is the Vice President of Government Affairs at Pinnacle West Capital Corporation and the Private Sector Co-Chair of ALEC's Energy, Environment, and Agriculture Task Force.

EPA's Regulatory Barrage and the Lone Star State

BY KATHLEEN HARTNETT WHITE & MARIO LOYOLA

At their annual meeting in 1997, state environmental commissioners handed out T-shirts with the slogan "The states are not branches of the federal government." Under the Obama administration, that slogan is starting to seem like wishful thinking.

Today's Environmental Protection Agency (EPA) is expanding regulatory jurisdiction over economic activity at all levels and supplanting long-upheld state authority with breathtaking speed. In the last 18 months, the EPA has proposed or adopted at least 25 rules under the *Clean Air Act* (CAA): regulatory edicts of unprecedented scope and stringency and with little identifiable environmental benefit. Along with other heavy-handed federal initiatives, such as the healthcare law, President Obama's environmental agenda is rapidly turning into a historic assault on the constitutional constraints that were meant to keep the federal government from growing too powerful.

Over most of its history, the EPA has strengthened environmental standards in an incremental manner, allowing some balance between environmental and economic needs. Indeed, much environmental improvement has been achieved. On this fortieth anniversary of the CAA, the record is impressive. Nationally averaged ambient levels of many pollutants have been dramatically reduced. From 1980 to 2008, lead has been reduced by 92 percent, carbon monoxide by 79 percent, sulfur dioxide by 71 percent and ozone by 25 percent. Today's new vehicles emit 88 percent less nitrogen oxides (the key precursor of ozone) than cars and trucks 10 years older.

Innovative emission control technology and cost-driven energy efficiency account for most of the air quality improvement, but EPA regulations played a major role. The new heavy-handed EPA, however, operates far more like an activist for whom no standard is too high, no impact too onerous, no risk too low and no science too speculative.

A new National Ambient Air Quality Standard (NAAQS) for ozone, anticipated new NAAQS for particulates, and impracticable emission standards for industrial and commercial boilers, cement kilns, coal-fired power plants, and greenhouse gases (GHG) are a few of the EPA's new headlining projects. The steady onslaught of aggressive EPA actions is creating a regulatory climate that has started to freeze investment and job creation.

With our many energy intensive industries, Texas is disproportionately impacted—and in some cases, it has been directly targeted by EPA. Texas is resisting the barrage of EPA actions, in part through at least eight lawsuits against the agency. Texas is resolutely refusing to acquiesce to EPA's demands that the state begin regulating greenhouse gases on Jan. 2, 2011. As our Attorney General Greg Abbott and the Chairman of the Texas Council on Environmental Quality (TCEQ) Bryan Shaw wrote to the EPA in August 2010, "Texas has neither the authority, nor the intention of interpreting, ignoring, or amending its laws in order to compel the permitting of greenhouse gases."[1]

EPA actions threaten not only the future of the Texas economy but also state environmental programs that have been highly successful. From 2000 to 2008, Texas lowered ozone emissions by 22 percent compared to a national average of only eight percent. Houston, the nation's largest petrochemical complex, long vying with Los Angeles as the most ozone-polluted urban region in the United States, met the legally binding federal standard for ozone (85 parts per billion or ppb) in 2009. Remarkably, this clean air achievement occurred while the Texas economy was growing a third faster than the nation as a whole. Instead of rewarding the state's performance, EPA has begun invalidating the air quality rules of the TCEQ and federalizing state-issued permits.

Kathleen Hartnett White is Distinguished Senior Fellow-in-Residence at the Texas Public Policy Foundation and Director of the Armstrong Center for Energy & the Environment. | **Mario Loyola** is Director of the Center for Tenth Amendment Studies and a Policy Analyst for the Center for Energy and the Environment. They are members of ALEC's Energy, Environment, and Agriculture Task Force.

Federalizing State Authority - Texas Flexible Permits

Last July, the EPA formally disapproved the sixteen-year-old Texas Flexible Permitting Program. As a strategic mechanism for achieving huge emission reductions, the flexible permits impose tight facility-wide emission caps for individual pollutants, while leaving plant operators some flexibility. Coal and petroleum-coke fired power plants with flex permits have decreased sulfur dioxide by 25,803 tons per year, nitrogen oxides by 10,330 tons per year and particulate matter by 795 tons per year. Over 120 of our major industrial facilities, including most Texas refineries, large manufacturers, and some power plants, currently hold these permits. As a result of the EPA's invalidation, their operating authority was immediately thrown into legal limbo.

Although the EPA has yet to conclude how the state permitting rules should be changed to satisfy its concerns, the EPA considers the facilities that hold Texas flexible permits to be in violation of the CAA. The facilities fully comply with the state-issued permits but the EPA elects to use blunt coercive authority against the facilities in the guise of a "voluntary" audit to conclude with an enforcement decree. In so doing, the EPA subverts the state's proper regulatory role under the CAA. The EPA has apparently invented a new method of rulemaking through enforcement, outside the constraints of the *Administrative Procedures Act*. Texas is now challenging the EPA's invalidation of the Texas Flexible Permitting Program in a petition for review before the 5th Circuit Court of Appeals.

The EPA's action jeopardizes the planned construction of a new $6.5 billion Motiva refinery in Port Arthur and Total's planned $3 billion refinery expansion. Thousands of new highly-skilled and well-paying jobs are at risk. And it's not just Texas that suffers. EPA's heavy-handed response to a dispute over permit rules strikes the heart of the state's industrial base, one of the vital engines of the U.S. economy. Texas produces more than 25 percent of the country's transport fuel and more than 60 percent of its industrial chemicals—and over the past year was single-handedly responsible for over 60 percent of all job creation in the country.

Legal Uncertainty Hobbles Economic Activity

To plan and thus prosper, businesses depend on a predictable legal system in which to operate. When environmental regulations no longer secure clear and reliable obligations, legal uncertainty freezes business decisions. Regulatory risk has an adverse impact on investment valuation. "Regulatory uncertainty is the enemy of economic development," says one Valero executive. "If you can't estimate the value of a project, you don't make the investment."

The new EPA rules do not merely impose added marginal costs on production; they threaten entire sectors of the economy. If the Administration's real goal is "to end the era of fossil fuels in our generation," as President Obama has repeatedly declared, the EPA is blazing the path. There's just one problem: no alternative to fossil fuels yet exists that can replace 85 percent of our energy with remotely comparable supply, efficiency and affordability.

The sheer number of recent EPA actions is staggering, but the revised federal standards for ozone and fast-tracked greenhouse gas regulation are the most heavy-hitting. These rules would impact large industry and small business across the country on a scale that could drive the lion's share of the U.S. manufacturing base to foreign countries without the EPA's regulatory burden.

In a June 2010 report, the Business Roundtable, which represents companies that employ more than 12 million people, warned of the economic harm posed by the EPA's new agenda. "As the U.S. manufacturing sector continues to struggle and is shedding jobs overall, the EPA's actions will … create uncertainty and place U.S. companies at competitive disadvantage compared with foreign firms."[2] Organized labor, historically not a regular opponent of EPA rules, has formed Unions for Jobs and the Environment to resist EPA's job-killing plans. In response to the proposed rule for industrial boilers, the United Steel Workers commented: "Tens of thousands of these jobs will be imperiled. In addition many more tens of thousands of jobs in the supply chain and in the communities where these plants are located will also be at risk."[3]

New Ozone Standard

In January 2010, the EPA proposed a far stricter ozone standard. Final adoption of the standard is expected this fall. Within a range of 70-60 parts per billion, the new ozone limit will be the third new federal standard in six years.[4] Many scientists and medical doctors contest the EPA's scientific justification for lowering the standard below 85 ppb. Dr. Roger McClellan, former chairman of the EPA's own Scientific Advisory Committee, testified that a lower ozone standard is a "policy judgment based on a flawed and inaccurate presentation of the science."[5]

When establishing the health-based ozone standard, the EPA relies on epidemiological, toxicological and clinical studies as well as multiple risk-assessment methodologies. The EPA's new standard heavily rests on epidemiological studies that are inconclusive and contradictory. The largest study looked at 95 U.S. cities over 14 years. A correlation between ozone levels and adverse health effects was found in only six of the 95 cities, and Los Angeles, with by far the worst ozone pollution, was not among them.

One Texas study even showed fewer hospital visits for asthma during the summer ozone season than during winter when ozone levels are far below the

standards. Federal regulatory decisions of the magnitude of EPA's proposed ozone standards should be justified by state-of-the-art science demonstrating a causal connection between ozone levels and health effects, rather than relying on vague correlations between ozone levels and health effects.

The EPA's new standard will have widespread impacts across Texas and the country. According to the Congressional Research Service, only 85 of the more than 3,000 counties in the U.S. currently exceed the 85 ppb standard. Under the EPA's new standard, the number of federally shackled non-attainment counties could increase to 650, including every county with an ozone monitor. Texas would go from having two non-attainment areas to 10 or more, including Brewster County in the Big Bend area of southwestern Texas—one of the most remote and sparsely populated areas of the country.

Federal non-attainment status imposes complex administrative and technical requirements on state and local governments. Federal designation of a non-attainment area immediately sets a ceiling on economic growth. When industries plan to expand or open a new plant, they typically avoid location in an ozone non-attainment area.

After reducing ozone forming emissions from major stationary sources by 80 percent Texas has few industrial sources left which could yield significant emission reductions. Mobile sources such as cars and trucks are now the overwhelming source of ozone-forming emissions. But state regulation of these sources is preempted by the CAA and as a result states have no means of directly controlling those sources without a rarely given and minimally effective special exemption from the EPA. In Dallas-Fort Worth, mobile sources now account for 79 percent of ozone pollution. Even in industry-heavy Houston, mobile sources account for over 70 percent. Emissions from mobile sources are the EPA's responsibility, but the agency shows little desire to effectively tackle the issue. The EPA demands that states attain the federal ozone standard—with sanctions at the ready if the state does not succeed—but denies states the regulatory authority to address the remaining bulk of the problem.

The originally envisioned relationship of cooperation between the EPA and state environmental agencies has been replaced by federal command and control over states. In an early version of the CAA, Congress found "that prevention and control of air pollution at its source is the primary responsibility of States and local government."[6] In practice, this meant that the EPA was to establish national air quality standards and each state was to design and implement the means to attain the standards. Subsequent amendments to the CAA increased the EPA's oversight and control over state decisions, such that federal authority to approve State Implementation Plans now gives the EPA essentially dictatorial authority over all state regu-

The Offshore Drilling Moratorium's Assault on Jobs

The Obama administration is leveraging environmental regulations to impose an energy policy that seeks to stymie the domestic production of fossil fuels. Most of the scientists whose names were cited as having recommended a blanket ban on offshore drilling have since loudly protested that they did no such thing, and Undersecretary of Commerce Rebecca Blank recently testified that the administration didn't bother to assess what the economic impact might be before it issued the moratorium. The ban had no basis in the *Oil Pollution Act*, which permits the feds to halt drilling on a case-by-case basis but not for the industry as a whole. Three federal courts struck down the moratorium as an illegal, "arbitrary and capricious" exercise of regulatory power, but the administration simply ignored them.

By the time Ken Salazar declared an end to the offshore drilling moratorium on October 12, 2010, the regulatory uncertainty had already driven five major drilling rigs to other countries, with millions of dollars in disrupted contracts. The new head of the Bureau of Ocean Energy Management, Regulation, and Enforcement assures environmentalists that he won't be in any hurry to approve new permits, and industry leaders have made it clear that they've gotten the message.

As if further proof were needed of the administration's animosity to the domestic oil and gas industry, the processing of permit applications for shallow water drilling (in less than 500 feet of water) has slowed to a tiny fraction of what it was before the BP spill. One report estimates that the slowdown in permit processing will eliminate perhaps 40,000 jobs on the Gulf Coast, according to one report. The Louisiana Economic Development Agency has predicted that 20,000 jobs will be lost in Louisiana alone if new offshore drilling—deepwater and shallow-water—doesn't start again quickly, and that most of those job losses will be felt by small and family-owned businesses.

The Obama administration defends its disregard for the obligation of private contracts by saying that the companies are big enough to take the losses—and that the thousands who lose their jobs can be compensated from the BP liability fund, as if they don't need jobs so long as they get handouts. But the BP liability fund won't protect those who lose their jobs in the shallow water drilling sector which was never subject to a moratorium; nor the jobs lost from slow-walking leases along Alaskan shores, including Beaufort Sea; nor jobs lost from the delay and denial of leases on federal land in the Western U.S.

lations remotely related to air quality.

Regulating Greenhouse Gases via the Clean Air Act

EPA's "Endangerment Finding," that carbon dioxide (CO2) is a pollutant under the CAA, wins top honors for reckless bureaucratic overreach. As Iain Murray noted in the Dec. 31, 2009, issue of *National Review*, the Endangerment Finding demonstrates "the administration's contempt for the Constitution," and is "an act of legislative thuggery and an economic suicide note, all in one package."[7]

Many proponents and opponents of carbon limits agree that the CAA is wholly unsuited to regulate CO2, a ubiquitous by-product not just of all economic activity but indeed of oxygen respiration in all forms of life. CO2 constitutes a major fraction of the Earth's atmosphere, and as Justice Scalia argued in dissenting from the landmark Supreme Court's ruling in *Massachusetts vs. EPA*, something cannot "pollute the air" if it *is* the air.

In fact, the average human being exhales about 800 pounds of CO2 annually, slightly less than 1/250 of the 100 tons per year threshold for pollutants under the CAA. In other words, every business that emits as much CO2 as 250 persons exhale in a year would need an EPA Title V operating permit, which would include millions of buildings and restaurants. By the EPA's own estimate, the number of Title V permit holders would increase from the current 14,000 to more than 6 million, at a cost to permit holders of $49 billion over three years, just in the costs of securing the permits, on top of the $23 billion administrative cost for the agencies issuing the permits.

Even the EPA recognized that the result of regulating greenhouse gases under the literal terms of CAA would be "absurd," "infeasible," and "adversely affect national economic development." To avoid this, the EPA simply re-wrote the law in rule, changing the black-letter regulatory triggers in the CAA and substituting its own vastly higher thresholds in order to narrow the number of entities affected in the *initial phase* of implementing the new regulation. In this "Tailoring Rule," EPA changed the statutory thresholds that trigger Title V and Preventions of Significant Deterioration (PSD) permits from 100 tons per year (tpy) and 250 tpy, respectively, to 100,000 and 75,000 tpy.

Through an unlawful change to federal law, comically strained interpretation of existing rules and a six-hundred word new definition of what "subject to regulation" now means to state agencies, the EPA declared regulation of CO2 automatic January 2, 2010. If states are unwilling or legally unable to meet this effective date, the EPA will immediately take over with Federal Implementation Plans (FIP). EPA's Federal Register notice of early September lists 13 states as the most likely candidates for a FIP, with Texas among them.

As Gov. Rick Perry said recently, to accept EPA's greenhouse gas lawless initiative would be "following flawed science down a road that will lead to the loss of hundreds of thousands of Texas jobs, while doing nothing more to protect human health."[8] In a now famous Aug. 2, 2010, letter to EPA, the Texas Attorney General Greg Abbott and TCEQ Chairman Bryan Shaw communicated the categorical refusal of the state of Texas to comply with the new regulation. "The State of Texas," they wrote, "does not believe that EPA's 'suggested' approach comports with the rule of law. The United States and Texas Constitutions, United States and Texas statutes, and EPA and TCEQ rules all preclude TCEQ from declaring itself ready to require permits for greenhouse gases from stationary sources as you request."

As the stakes increase dramatically in this showdown between Texas and the EPA, what hangs in the balance is not just the autonomy and economic future of all the states, but indeed the very balance of shared sovereignty that is essential to our federalist Constitutional framework. The Obama administration's assault against economic freedom and Constitutional constraints must be resisted. ■

ENDNOTES

1 Shaw, Bryan W., and Greg Abbott. Letter to Hon. Lisa Jackson. Aug. 2, 2010. <http://www.alec.org/AM/PDF/Energy/AM2010/txletterepa.pdf>.

2 *Policy Burdens Inhibiting Economic Growth*. Business Roundtable, June 2010.

3 United Steel Workers Union. *Comment: Proposed Rule, National Emission Standards for Hazardous Air. EPA-HQ-OAR-2002-0058-2964.1.* <http://www.regulations.gov/search/Regs/home.html#documentDetail?R=09000 06480b3b688.>

4 EPA initially adopted the eight-hour 85 ppb standard in 1997 but did not give legal effect to the standard until 2004 with federal designation and classification of non-attainment areas. In March 2008, EPA adopted a 75 ppb standard. EPA, with questionable legal authority, and again proposed a revised standard in January 2010. The adopted federal standard does not impose legal obligations on states until EPA designates non-attainment areas although frequent change creates acute regulatory uncertainty for state government and the private sector.

5 Senate Subcommittee on Clean Air and Nuclear Safety Hearing on EPA's Proposed Revision to the National Ambient Air Quality Standards for Ozone (2007) (testimony of Roger O. McClellan). <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=57ca4cda-7a2a-4da7-afba-80a4d2fbbb6d>

6 81 Stat. 485, 42 U.S.C. § 1857(a)(3).

7 Murray, Iain. "Air Power: In Which the EPA Mistakes Itself for Congress." *National Review* Dec. 31, 2009. Print.

8 Office of the Governor Rick Perry. *Statement by Gov. Perry Regarding Proposed Revision of National Ozone Limits*. Jan. 7, 2010. <http://governor.state.tx.us/news/press-release/14128/>.

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The 10th Amendment

Steps You Can Take to Restore the Balance

BY MERRILL MATTHEWS, Ph.D.

The November elections have brought sweeping changes in both the state legislatures and the state houses, not to mention Washington. Those changes present an opportunity for states to reassert the role of federalism and the federal government's limited and enumerated powers under the 10th Amendment of the Constitution.

State elected officials have been embracing the opportunity. Texas Governor Rick Perry, a Republican, frequently mentions his newfound appreciation for the 10th Amendment, especially as he fights efforts by the Environmental Protection Agency to micromanage state environmental affairs.

Perry's not alone. West Virginia's Democratic Governor Joe Manchin, running for the late Senator Robert Byrd's seat, was quoted by *The Wall Street Journal* as saying he would not "let any federal agency usurp the 10th Amendment of the U.S. Constitution and the sovereignty and the rights of the states to govern for themselves."

Of course, 22 states, through their attorneys general or other elected officials, have already taken action by filing suit against ObamaCare, claiming that the federal government has no constitutional authority to require people to have coverage. And more than 30 states have introduced or are preparing to introduce legislation based on ALEC's model *Freedom of Choice in Health Care Act*, asserting the federal government cannot tell a state's citizens they must have health insurance.

Clearly states are energized to fight the growing federal encroachment, but what can they do? Here's a blueprint to help guide state legislators and their efforts.

Learn about the 10th Amendment. The public is increasingly interested in both the Constitution—it was reported last summer that copies of the Constitution have become the most purchased publication at the Government Printing Office—and the 10th Amendment. Predictably, that development has encouraged liberals to write articles claiming that the 10th Amendment is being misinterpreted and misapplied, that it really doesn't mean what it says, or that the courts have ignored it because it was an afterthought, little more than a throwaway provision.

While it is true that courts have increasingly adopted a broad interpretation of federal power—and especially of some provisions like the Commerce Clause—the 10th Amendment was an important part of the Bill of Rights. State legislators cannot defend federalism in a knowledge vacuum. You need to be familiar with both the amendment and its history. You can start by going to the Tenth Amendment Coalition's website at www.restorethetenth.org, where several articles and scholarly studies are posted.

Reach out to your state colleagues. State legislators can't and shouldn't try to undertake this effort alone. For one thing, there are too many areas where the federal government is overreaching. While President Obama's health care legislation is getting the most attention, there are environmental issues, housing and the home loan-process, education, immigration, and many more. You can't be on every committee and track every issue. State legislators need to reach out to their colleagues to form a coalition of legislators who want to fight federal encroachment.

Moreover, the media and liberals tend to dismiss those who talk about the 10th Amendment as people on the fringe, referring to them derogatorily as "Tenthers," much as they dismiss those involved with the Tea Party movement as "tea baggers." (Note: You've never heard those same liberals and media deride those concerned about First

Merrill Matthews, Ph.D., is a resident scholar with the Institute for Policy Innovation and works on the Tenth Amendment project for the Tenth Amendment Coalition.

Amendment freedom of speech rights as "Firsters;" name calling is just a way to denigrate a lot of serious voters' concerns about federal encroachment on state and individual liberties.)

Rep. Rob Bishop, a congressman from Utah, has done exactly this in Congress. He began a congressional Tenth Amendment Task Force and reached out to nine other congressmen to be part of it.

Reach out to colleagues in other states.

If only one state were pushing back against federal overreach—as Arizona did in 2008 against an individual requirement to have health insurance—it would be easy for the media and liberals to dismiss. When several states are pushing back, people know something is happening. That's why ALEC's *Freedom of Choice in Health Care Act* is so important. Unlike the lawsuits filed largely by attorneys general in 22 states, the *Freedom of Choice Act* is a demonstration of the popular will. As with the popular vote in Missouri in August, Washington sees that the general public—the same people who elect U.S. congressmen and senators—thinks Washington is going too far.

ALEC is the state legislators' best resource for coordinated action. The Institute for Policy Innovation and the State Policy Network co-sponsored a very well-attended workshop at the last ALEC Annual Meeting to discuss what states were doing—and what they could do. Two other state think tanks will be hosting workshops at ALEC's annual Washington meeting in December. There have been nationwide conference calls about 10th Amendment developments and there will be more efforts, especially through Karla Jones and ALEC's Federal Relations Working Group (part of the International Relations Task Force). In addition, the Institute for Policy Innovation has set up a Tenth Amendment Coalition so that not just organizations, but state legislators can join as a way of reaching out to those interested in these issues.

These opportunities give states the ability to learn what other states are doing and to strategize about how to move forward. And they allow the states to speak with one voice, which often has a better chance of getting Washington's attention.

Reach out to your governors and attorneys general.

Besides your own legislative colleagues, you need to include your governors, lieutenant governors and attorneys general. While the AGs' lawsuit has fallen along mostly partisan lines, opposition to federal encroachment will transcend partisan lines in several areas. So it is important that state legislators let their statewide elected officials know their concerns and the reasons for them.

Reach out to your federal delegation.

Of course, the best way to stop federal overreach is for members of Congress to refuse to vote for actions and legislation that the Constitution reserves for the states and the people. Getting that buy-in won't be easy because Congress and the executive branches so seldom even trouble themselves with asking if they have the power under the Constitution to do something. State legislators can change that disregard by informing members of Congress about their state's concerns.

Another way to increase limited-government awareness is to support an effort repeatedly introduced by retiring Arizona Rep. John Shadegg, which required each bill to identify where in the Constitution it was empowered to do what the legislation sought to do. That recommendation was incorporated in the Republicans' recent "Pledge to America." And while the Pledge may have a partisan side, the notion that each bill introduced into Congress expressly state where the Constitution authorizes such actions transcends partisanship among those who truly believe the Constitution is a document of limited and enumerated powers.

Identify areas of federal overreach.

While we may convince Washington to be more circumspect about assuming authorities it doesn't have, constant vigilance will be necessary. Working with your own state colleagues and with other states—especially through ALEC's Federal Relations Working Group—will help you identify key areas where the federal government is usurping state authority and responsibility.

Work with state-based think tanks to develop intellectual ammunition.

There are lots of groups that can help the states in their mission to curb federal power. Every state has at least one state-based, free-market think tank. They are local, nonprofit organizations that exist to keep taxes and regulations low and freedom abundant. Several are even putting significant resources into a 10th Amendment effort. You can find the think tank in your state at www.spn.org.

Additionally, several of the national think tanks are working on 10th Amendment issues, including the Institute for Policy Innovation and the Heritage Foundation, but there are others. And finally ALEC will be very involved in making sure that state legislators interested in federalism and the 10th Amendment will have the information, contacts and resources to get involved.

Reviving the notion that federal powers are limited and enumerated will take both time and effort, in part because the country has drifted so far from that ideal for so long. But with conference calls, interaction, briefings and research and publications, it can be done. Indeed, it must be done if we intend to preserve the republic as it was handed to us by the Founding Fathers. ■

Puppy Politics

Animal Rights Advocates at the Ballot Box

BY DAVID MARTOSKO

Citizen-initiated ballot measures, a political innovation that first proliferated during the Progressive Era, seem like a no-brainer for democracy-minded strategists. But there have always been drawbacks: the proverbial tyranny of the majority, special-interest funding, and a dumbing down of nuanced issues. Nowhere have these been more evident than in today's animal rights lobby, led by the Humane Society of the United States (HSUS).

Animal-rights ballots initiatives are nothing new, but their targets have historically been niche practices of hunters and trappers. Today, however, the big show is all about animals raised for food. Since every American eats (roughly) three times a day, literally everyone has a stake (no pun intended) in the resulting controversies.

The recent spate of state-level referenda targeting livestock ranchers has a uniquely fraudulent origin. In Florida's 2002 election, animal rights groups secured a constitutional amendment guaranteeing pregnant pigs the "right" to be housed in something other than the metal stalls which were the industry norm.

Since only two sizable farms in Florida were breeding pigs at the time, "Amendment 10" was both frivolous and an electoral slam-dunk. Two real-life consequences of the groundbreaking Florida "pregnant pigs amendment" were felt almost immediately. When it became clear that breeding sows would no longer be profitable in Florida, both farms affected by the new law slaughtered their entire herds. And Florida legislators quickly began laying the groundwork for another amendment, requiring a 60 percent supermajority for future ballot-box editing of the state constitution. (It passed in 2006.)

By 2006, animal rights advocates were ready to flex their direct democracy muscles again. In Arizona, HSUS successfully passed "Proposition 204" (62-38 percent), which mimicked Florida's prohibition of "gestation crates" for pregnant sows and added an additional measure outlawing crates and tethers in veal production. That effort cost HSUS $633,000 to manage.

In 2008, HSUS marched into California and ran the tables again—spending $3.86 million to outlaw the use of conventional cages for egg-laying hens. Although they were no longer the focus of the campaign, pork and veal production restrictions mirroring the Arizona law were also part of the package. "Proposition 2" passed 63-37 percent, and is scheduled to become California law in 2015.

A similar fight set this year for Ohio was avoided by a last-minute compromise between HSUS, Governor Ted Strickland, and the Ohio Farm Bureau.

HSUS had already poured $1.56 million into the campaign—84 percent of all dollars raised for the effort—and collected more than 500,000 signatures to qualify its ballot title for the November ballot, which was essentially a carbon copy of the 2008 language from California.

Most observers expect animal rights advocates to resurrect those Ohio signatures—which have no statutory "expiration date"—in the next few years, since Ohio's newly minted Livestock Care Standards Board is unlikely to behave in a way that will placate the animal rights movement.

The animal rights lobby has also supervised less contentious initiatives related to hunting, racing, and dog breeding. This year's "Proposition B" in Missouri is a good example. Its main thrust is language that would limit dog breeders to owning a maximum of 50 animals. HSUS is expected to take advantage of the initiative's (perhaps intentionally) vague wording in the near future, applying those limits on animal ownership to farmers and ranchers.

Ballot initiatives provide a way to force new regulations on an industry while framing the debate in "humane" terms that are difficult to oppose. And like a football team racking up "first downs," each successive victory moves the chains and puts increasing pressure on the large sectors of the economy that find themselves constantly playing defense. And the touchdown? It's an endlessly long field. Veganism awaits at the goal line.

If there was a bellwether ballot campaign for this issue, it was the 2008 "Prop 2" battle in California. Unless government intervenes (or market forces snap Californians back to reality), 2015 will see a new law come into force that will require egg farmers to dramatically increase the amount of wing-flapping room each hen is allotted.

But animal rights extremists are already willfully contorting the meaning of the initiative's text, claiming that Prop 2 requires egg farmers to go completely "cage-free." The agricultural renovations required by this interpretation of the new law would dramatically increase the cost of eggs at retail. And the symbolism of eliminating—not just enlarging—chicken cages would be a powerful affirmation of the animal rights credo. But the law itself only requires farmers to give hens sufficient room to spread their wings. It's silent on the cage-free question.

HSUS's legal department, of course, is prepared for a bare-knuckle fight over this. And it's already pushed a companion bill through the state legislature (AB 1437) guaranteeing that every whole egg sold in California must meet Prop 2 standards, regardless of which state produced it. (Notwithstanding the inevitable Commerce Clause court challenges, this law will also come into force in 2015.)

The options for agriculture are bleak: fight animal rights groups in a costly courtroom battle, or implement changes whose costs must be passed on to consumers. The time for winning the hearts and minds of voters seems to be over.

Obviously, not every state permits voters to endorse these emotional ballot initiatives. However, the real aim of HSUS and related groups is a federal law codifying the new California standards. In the coming decade, these animal rights advocates will almost surely propose a dramatic rewrite of the 1966 federal *Animal Welfare Act*. Cage-free egg production, free-range pig farming, and the elimination of subtherapeutic animal antibiotics will be the proposal's centerpieces. These three mandates promise to increase, thereby lowering demand for animal protein. If a dozen eggs should double in price, for instance, a significant number of Americans living below the poverty line would suddenly find an omelet priced out of their reach.

So is there any hope for Old MacDonald and his Farm Bureau? Or will the animal rights movement succeed in eliminating cages, crates, medicines, and every cost-saving technological advancement that makes food so affordable in America (at least by global standards)? AB 1437 passed through the California legislature with bipartisan support and little agricultural opposition. From the point of view of states with similar agriculture standards already on the books, a federal law forcing the same rules on all 50 states will have broad appeal.

The animal rights lobby depends on divide and conquer strategy. But if agriculture doesn't hang together, as Ben Franklin once said … well, you know the rest. Farming interests—in fact, every economic sector whose elimination is a step toward a vegan utopia—all need greater unity to survive. Livestock farmers, cancer researchers, dog breeders, cat fanciers, the shooting sports industry, furriers, zookeepers, thoroughbred racers, and even pest exterminators need to recognize this common threat. ■

David Martosko is Director of Research at the nonprofit Center for Consumer Freedom, a watchdog organization that educates the public about the activities of activist groups. David is a nationally recognized expert on the modern animal rights and environmental movements.

A Unique Opportunity for Tobacco Tax Codes to Reduce Health Risks

BY SUSAN M. IVEY

Susan M. Ivey is chairman, president and CEO of Reynolds American Inc., the parent company of the nation's second-largest tobacco-products manufacturer. On Aug. 4, 2010, Ivey spoke at ALEC's annual Leadership Dinner, held in San Diego, Calif. The following article is based on Ivey's remarks to the audience.

My company is fortunate to have enjoyed a long and mutually beneficial relationship with ALEC, and we are pleased to call ALEC an "old friend." Today, however, we find ourselves in the position of needing to make a "new friend" in the Food and Drug Administration (FDA).

After President Obama signed the bill last year giving FDA authority to regulate the tobacco industry, we decided to look for areas where we might have some common ground with the Agency. We quickly learned that we and the Agency agreed on several key points.

Among the FDA's Center for Tobacco Products goals are:

- Reducing youth tobacco usage,
- Promoting public understanding of the contents and consequences of use of tobacco products, and
- Reducing the toll of tobacco-related diseases, disability and death.

We couldn't agree more. Each of these goals is laudable, and I believe real progress can be made against all three. Youth smoking rates, for example, are half what they once were—a tremendous improvement. R.J. Reynolds Tobacco Company has several valuable programs and initiatives underway in an effort to do its part to help drive down youth access to and use of tobacco, and I'd love to be invited back to ALEC one day to share ideas and gain insight from you on that issue.

I'd like to focus on the other two key goals FDA has set for tobacco regulation: increasing consumers' understanding about health risks, and tobacco harm reduction.

With the advent of FDA regulation of our industry, we find ourselves presented with an opportunity to contribute to the shaping of future tobacco-related policies and regulation.

And frankly, so does ALEC.

Let me set the stage. Roughly 50 million Americans use tobacco today—more than 20 percent of the adult population. The great majority of them smoke cigarettes. Smoking rates have declined over the last 30 years, and continue to do so; U.S. cigarette sales typically decline about 2 percent to 4 percent or more each year.

To achieve these declines in smoking rates, tobacco-control advocates have historically set their sights on eradicating tobacco use—especially smoking—altogether. Some of you may remember the call for a "smoke-free society by the year 2000."

40 MILLION
smokers in the United States

Well, 2000 came and went and a decade later 40 million Americans still smoke. And they do so fully aware that smoking is putting their health at risk. They may have chosen to continue to smoke, or may have come to believe that quitting smoking is just too hard. I believe the dynamics of that situation can be changed.

Historically, smoking-cessation advocates have relied on two approaches: reducing the number of people who start smoking, and encouraging those who do to quit. Both are valuable tools in reducing the number of people who smoke. However, I believe that by adding a third element to the mix—tobacco harm reduction—public policy could take a more comprehensive approach to reducing the death and disease caused by smoking.

A growing body of science shows that there are significant differences between the risks of burning products, particularly cigarettes, and smokeless tobacco products. When it comes to tobacco products, all of them have risk, but not all of them are equally risky.

If public-health policies recognized that by moving adults who don't quit using tobacco altogether from higher-risk products, like cigarettes, to alternatives that may present less risk, huge strides could be made in improving public health.

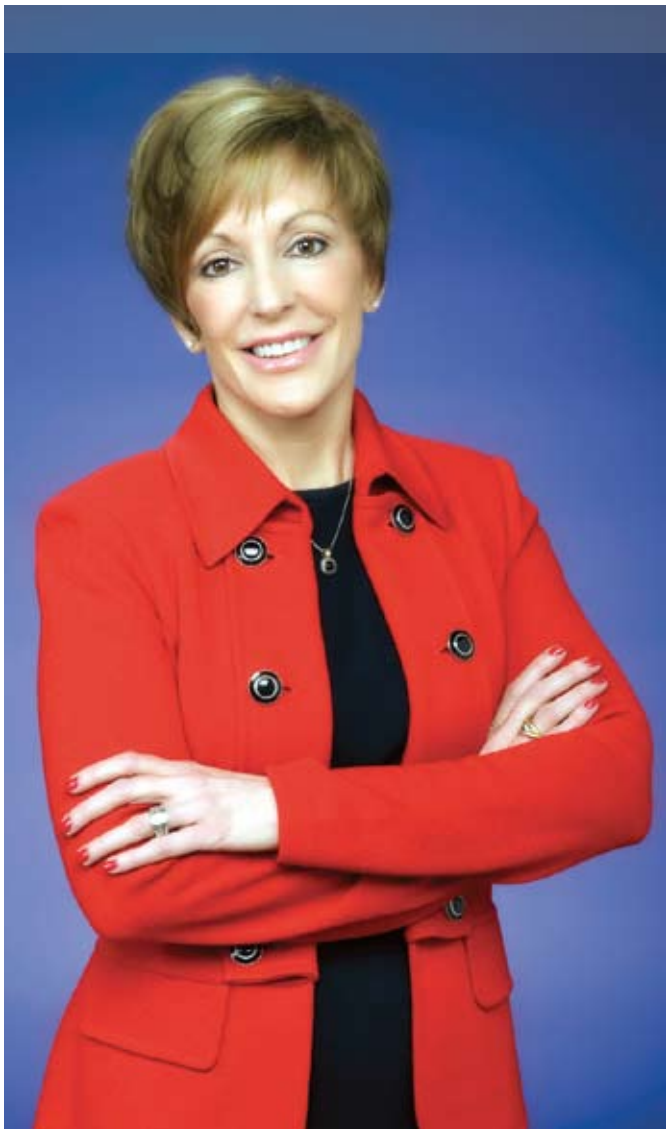
Different studies place different values on how much less risk users of smokeless tobacco products face when compared to smokers. In general, as Britain's Royal College of Physicians concluded, "Smoking is many times more dangerous than smokeless tobacco use."

Even the risk of oral cancer is lower in using smokeless tobacco than in using cigarettes. American Cancer Society data indicate that the risk of oral cancer is about 10 times higher from smoking than from using smokeless tobacco products.

More than 80 percent of smokers don't know that. I believe they deserve to.

In the interest of full disclosure, not everyone agrees with me on that point. There are members of the public health community who believe that anything that may prevent consumers from quitting tobacco use altogether is an impediment to progress.

I agree that eliminating harm would be best. But in the interim, reducing the harm caused by cigarettes is a worthwhile goal.



So what can be done to better educate smokers about alternative tobacco products that might reduce their risk? Certainly the FDA has a huge opportunity in that arena. We are hopeful that the Agency will give tobacco harm reduction and the options available to smokers a fair and thorough hearing.

Tobacco manufacturers, too, must play in important role in encouraging smokers to try alternative, smoke-free tobacco products.

But perhaps of most interest to ALEC members is the role the states can play in supporting efforts to "migrate" smokers from cigarettes to smoke-free products that may present less risk.

Increases in state excise taxes on cigarettes have been justified (albeit somewhat paradoxically) in order to both raise more money for the states, and simultaneously drive down smoking rates. But what if tobacco taxes were instead used as a tool to incent smokers to switch to lower-risk alternatives? What if tobacco taxes were pegged to the level of risk the product presented?

This year alone, 22 states considered revenue bills that would have driven up tax rates on smokeless tobacco products. Many states already tax smokeless products at higher rates than cigarettes. Does that make sense? Higher prices serve as a disincentive to smokers switching to smoke-free products. If smokeless tobacco products have the potential to reduce smokers' health risks —and potentially long-term healthcare costs to the states— shouldn't tax rates be used to encourage switching, not discourage it? Certainly this is an issue that deserves objective analysis, at a minimum.

ALEC has a rich history of crafting thoughtful legislative platforms that inform and educate state legislatures on key issues that come before them. ALEC can play a unique role in broadening legislators' awareness of the unintended consequences that arise from tax codes that serve as an impediment to switching from cigarettes to smokeless tobacco.

Personally, I believe some percentage of the adult population will continue to use tobacco for the foreseeable future. The question is, can changing the form of tobacco they choose to use reduce the human, and monetary, toll cigarettes cost our society?

For those of you who hold elected office, and those who advise elected officials, I place this challenge before you: What role will you play in incenting, or impeding, smokers' consideration of alternative forms of tobacco that might lower their health risks?

Last year, the states took in more than $30 billion in tobacco taxes and payments— far more than any other entity. You are uniquely positioned to address this issue.

It's too important an opportunity … and obligation… to pass by. ■

Notes from Sudan

Women Chip Away at the Legislative Assembly's Glass Ceiling

BY WOMEN'S DEMOCRACY NETWORK

Participants at an August 2010 conference of Sudanese female legislators co-sponsored by the International Republican Institute's Women's Democracy Network and held in Juba, Sudan. Participants numbered over 120 and each of southern Sudan's 10 states was represented.

The Women's Democracy Network was established in March 2006 and is now active in 40 countries with 10 established country chapters. The goals of WDN are two-fold: to (1) encourage and prepare women for greater participation in politics and civil society, and (2) provide training, networking and mentoring opportunities that address the specific needs of women within each region and across regions.

For more information, please visit **www.wdn.org**

The history of women's participation in Southern Sudan's struggle for freedom and independence has laid the groundwork for the gender revolution experienced today. The general elections of April 2010 marked a historic turning point in the future of women in the South when more than 700 women were on the ballot at all levels except for the position of President of the Government of Southern Sudan (GOSS). This was all the more exceptional in a country historically dominated by men in all areas of life. The elections resulted in an increase in the representation of women in the Southern Sudan Legislative Assembly (SSLA) from 25 to 28.5 percent. Southern Sudan now ranks in the top 10 African countries in terms of female representation in parliament.

During the two-decade long civil war, women supported the struggle for freedom in various capacities including as combatants, domestic aid providers to soldiers, nurses, counselors, and organizers. During the peace negotiations, women played a significant role in the various processes that culminated in the signing of the Comprehensive Peace Agreement (CPA), which was signed in 2005 and the ending of hostilities between the North and South.

Women throughout the world continue to carry the greater burden of poverty, illiteracy and marginalization of opportunity. According to a recent World Bank study, these gender inequalities not only "reduce productivity in farms and enterprises and thus lower prospects for reducing poverty and ensuring economic progress," but they also "weaken a country's governance—and thus the effectiveness of its development policies."

Microloan programs, for example, build on the fact that around the world, additional income in the hands of women tends to have a more significant positive impact than giving an equal amount of money to men in the same household. This has been demonstrated in a number of studies including ones in Bangladesh, Brazil and Cote d'Ivoire. Moreover, there is a causal relationship between a higher percentage of women in government and business and lower levels of corruption and better governance. According to the same World Bank report, the increased presence of women in government around the world has "altered the traditionally male approach *(Cont. on page 33 - Sudan)*

Nothing is More Expensive Than a Missed Opportunity

The U.S.-Korea Free Trade Agreement

BY KARLA JONES, Director, ALEC International Relations Task Force

During his January 2010 State of the Union address, President Barack Obama challenged us "… to seek new markets aggressively, just as our competitors are," and warned that "If America sits on the sidelines while other nations sign trade deals, we will lose the chance to create jobs on our shores." The current administration's goal is to double exports over the next five years, which will result in two million new American jobs, according to Commerce Department estimates. Tom Donohue, president of the U.S. Chamber of Commerce, is also counting on exports to spur job creation and economic growth and views ratification of the pending free trade agreements (FTAs) as crucial to increasing exports. Since 95 percent of the world's consumers live outside our borders and the U.S. market is already largely open, the FTAs the United States implements result in significant increases in exports, making Donohue's logic sound.

No reasonable U.S. international trade strategy can ignore Asia. In contrast to our lackluster growth, the economies of Asia began rebounding strongly by year-end 2009 with output and exports returning to pre-crisis levels throughout the region. Already accounting for over 50 percent of world gross domestic product (GDP), by 2030 Asia's GDP is expected to exceed that of the G-7. The Republic of Korea (ROK), with the world's 13th largest economy and a skilled and educated population of 48.5 million, is already the United States' seventh largest trading partner. However the U.S. share of the Korean market has been slipping steadily over the years along with our standing in that country. The United States is behind both China and Japan in goods exports to Korea. Ratifying the U.S.-Korea Free Trade Agreement (KORUS FTA) would go a long way toward reversing these negative trends and creating a level playing field for the United States, while also helping to create a major U.S. foothold in Asia.

The KORUS FTA was negotiated and signed by then U.S. and ROK presidents George W. Bush and Roh Moo-hyun in June 2007 and is awaiting ratification. If ratified, it will be the most significant U.S. FTA signed in over 16 years and will expand American trade opportunities in South Korea's growing and dynamic economy. The benefits of ratification will increase as rising South Korean incomes enable them to purchase more of our goods and services.

According to the Emergency Committee for American Trade (ECAT) *Bulletin on Trade and Investment, U.S.-Korea FTA Promotes New Economic Opportunities in a Vibrant Market with Major New Prospects on the Horizon*, numerous U.S. business sectors will benefit from ratification. U.S. agriculture is among them. The KORUS FTA will result in immediate duty-free treatment for more than half of U.S. agricultural exports to Korea including wheat, cotton, pistachios, wine and orange juice, and Korean tariffs on other agricultural products including beef, pork, apples and oranges will be eliminated over longer phase-out periods. Ratification of the KORUS FTA will also prove beneficial to the pharmaceutical industry. The ROK agreed to increase access for innovative pharmaceutical products and to increase transparency of its pricing and reimbursement policies for pharmaceuticals and medical devices. The investment and services sectors will be additional beneficiaries of a ratified KORUS FTA, as will certain segments of American manufacturers. Almost 95 percent of U.S. consumer and industrial manufactured goods will receive immediate duty-free treatment in Korea and virtually all of the remaining tariffs will be lifted within 10 years. Other sectors that stand to benefit from final ratification of the KORUS FTA include insurance and information technology. The agreement also provides U.S. suppliers with greater access to the ROK's government procurement market. Overall, the independent and non-partisan U.S. International Trade Commission estimates that the reduction of Korean tariffs and tariff-rate quotas on goods alone would add $10-12 billion of annual American merchandise exports to South Korea.

However, the KORUS FTA is not without its critics. Some, but not all, of the U.S. auto industry and the auto unions are foremost among them. The Agreement eliminates the 8 percent ROK tariff on American cars and the 2.5 percent American tariff on Korean ones. It also includes a number of innovative provisions, including a tariff snap-back mechanism, to address long-standing non-tariff barriers, such as discriminatory tax policies, and fuel emission and safety standards, to foreign autos

in Korea's market. However, critics are concerned that these non-tariff barriers are not fully and effectively addressed by these provisions and have sought greater assurance that Korea will open its market to U.S. autos. As directed by the U.S. and Korean presidents this summer, negotiators from both countries are currently working to address these issues more completely.

There are also some concerns about Korea's openness to U.S. beef exports. The KORUS FTA will eliminate the 40 percent tariff on U.S. beef and allows for full entry of U.S. beef. Following one case of bovine spongiform encephalopathy (BSE or Mad Cow Disease) in the United States, the U.S. beef industry is not shipping beef over 30 months of age to the Korean market given Korean concerns about its safety. Despite this limit, the National Cattlemen's Beef Association, representing the vast majority of the U.S. beef industry, strongly supports the KORUS FTA and is seeking to improve Korean consumer confidence in U.S. beef products. Some Members of Congress and a few in the beef industry have argued that Korea needs to allow all U.S. beef into Korea right now (even though the over 30-month beef that is not being shipped represents a very small portion of industry sales). U.S. and Korean negotiators are also working to address these concerns. In the meantime, Australian beef poses a significant challenge to the American beef industry. When BSE was discovered in U.S. cattle, Australia entered the Korean market gaining the majority share of the ROK's beef imports. The Peterson Institute for International Economics' Jeffrey Schott contends that the current situation will only be exacerbated once the ROK signs an FTA with Australia. One lesson learned from this situation is that once market share is lost to another country it is difficult to restore.

Other critics oppose the KORUS FTA based on a belief that it might undermine the ability of federal, state and local authorities to legislate to protect public health, safety and the environment. This is an erroneous yet tenacious argument that seems to surface with every new free trade agreement. In fact as CATO's Daniel Griswold observes in his book, *Mad about Trade*, "Signing trade agreements is not a surrender of American sovereignty but a prudent exercise of sovereignty." Trade agreements grant greater freedoms to citizens to purchase goods at fair market value without the interference of government in the form of tariffs and sanctions.

Nothing in the KORUS FTA prohibits governments at any level (national, state or local) from enacting, modifying or fully enforcing any domestic law to protect consumers, health, safety or the environment. In fact, the agreement affirms that all levels of government retain the absolute right to set such standards, just as under U.S. law. Like U.S. law, the KORUS FTA does impede the ability of Korea to discriminate or treat U.S. companies unfairly, which foreign countries sometimes do under the guise of protecting health, welfare and the environment. Just as under the *Administrative Procedure Act*, due process clauses and other provisions of U.S. law, governments must regulate in an open and transparent manner and one that is fair and not capricious.

Critics also claim that the investor-state dispute mechanism empowers foreign entities to change U.S. law, which is categorically false. The investor-state mechanism is one of the strongest provisions in the agreement to help ensure that the United States gets the benefit of Korea's commitments to address persistent barriers in the ROK market and to protect U.S. companies from discriminatory and unfair barriers. While the KORUS FTA also provides the same protections and access to investor-state dispute settlement to ROK companies in the United States, these companies already have those protections under U.S. law and the U.S. Constitution. ROK companies might choose to use investor-state arbitration over the U.S. court system, but there is no reason to think that they'd get a better result. In fact, there have only ever been 15 investor-state cases against the United States under any of the more than 40 agreements that have incorporated these provisions over the last 30 years. Even more striking is the fact that the United States has won all of the investor-state cases brought against it. Notably, under investor-state dispute settlement there is only the penalty of a fine; no government, including the United States, can be required to change its law. Companies would have to go to U.S. courts to

seek that type of result. Far from having a negative impact on national and state sovereignty, the investment provisions are based on core U.S. legal property and other protections from the Takings and Due Process clauses of the U.S. Constitution and other U.S. laws and, as Linda Menghetti of ECAT eloquently puts it, they "export our Constitutional principles abroad" to protect our companies, our property and U.S. interests when they go overseas.

Non-action on the FTA carries grave economic risks. Our trading position with the ROK slipped from number one in 2003 to number four today and will likely continue to fall without ratification. Meanwhile the ROK is aggressively pursuing agreements with other countries. The European Union (EU) signed an FTA with South Korea in October that will come into force next July, and the ROK is in dialogue with Australia, Canada, the People's Republic of China (PRC) and Japan about future bilateral FTAs. At a recent ASEAN + 3 summit, conferees discussed the possibility of establishing a wider Asian free-trade zone that would include the ROK, and Thai Prime Minister Abhisit Vejjajiva observed that Asia needed to identify new areas for economic growth that were not dependent on the U.S. or Europe. Asian economies are forging ahead with, or increasingly, *without* us.

Failure to ratify the KORUS FTA will effectively shut us out of one of the most significant strategic and economic regions in the world allowing the PRC unchallenged regional dominance. Non-ratification also sends a clear message to the ROK and any other country hoping to negotiate a bilateral FTA with the United States that U.S. presidents do not have the political power to negotiate agreements because Congress lacks the political will to follow through with ratification. "*Nothing is more expensive than a missed opportunity*," and the KORUS FTA is an opportunity that the United States cannot afford to miss. ■

(Cont. from page 30 - Sudan) to social welfare, legal protection, and transparency in government and business." Scholar Esther Duflo at the Massachusetts Institute of Technology observes that "women leaders do seem to better represent the needs of women. This is true even in an environment where women traditionally have very little power, female literacy is very low, and where many believe women leaders simply implement the wishes of their husbands. In fact, these women are changing the realities on the ground." Women empowerment programs amplify precisely these differences in decision-making to help communities in the developing world escape poverty.

Hence, it is critical that both men and women serving in parliament approach their legislative work with an understanding of the gender issue. Such understanding will make policy decisions more inclusive and effective. For example, members of the Women's Democracy Network (WDN) in Kenya have worked over the last year to include gender-sensitive legislation in Kenya's new Constitution. WDN members in Peru, who have formed the Multiparty Table of Peruvian Congresswomen (MMPP), over the past year have ensured the passage of a bill that created the Alimony Debtors Register and a law to allow shared custody of children. Additionally, the MMPP is working on Family Violence and Protection law. In Ethiopia women pushed for a land redistribution law to alleviate women's poverty, and in Russia women introduced legislation on labor, social security and children's rights.

Enabling female legislators to govern more effectively, especially with regards to addressing gender equality issues, was the focus of a conference the Women's Democracy Network co-hosted with the International Republican Institute's (IRI) Africa Division, the United Nations Development Fund for Women, and the GOSS Ministry of Parliamentary Affairs. More than 120 women—including all female members of the SSLA and representatives of the legislative assemblies of each of Southern Sudan's 10 states—participated in the conference held in Juba, Aug. 26-28, 2010. The presence of leading administration officials during the entire conference, including the Vice President of GOSS H.E. Riek Macahar Teny, underscored the government's commitment to encouraging women's empowerment throughout GOSS.

To achieve the conference goals, the WDN identified and utilized the international experience of successful women leaders from Nigeria, South Africa, Uganda and the United States to provide examples of best practices and to address the topics of drafting effective legislation, gender-based budget analysis, building consensus through an effective women's caucus, and the attributes and ethics of an effective legislator. The former Florida state legislator Leslie Waters said she "was overwhelmed and impressed with the conference attendees' eagerness and desire to learn how to make a genuine impact on the quality of life of women in Southern Sudan."

The Sudanese participants applied the tools they learned during the conference to put together the white paper "The Way Forward for the SSLA Women's Forum; Utilizing the Women's Caucus, Legislative Agenda and Partnerships to Effectively Govern." In addition, WDN assisted IRI/Africa in the development of a parliamentary manual entitled "the Legislator's Guide to Gender Politics" for participants to utilize as an ongoing resource to make a genuine impact on the policies formulated, debated and passed by their respective legislatures. The manual included case studies derived from the experiences of WDN's members from countries such as Afghanistan, Bolivia, Bosnia and Herzegovina, Indonesia, Lithuania, Macedonia, Morocco, Peru, Serbia, Timor-Leste and Uganda. ■

Defying Reason

Bad EU Policy that Negatively Affects the U.S. Economy

BY KARLA JONES, Director, ALEC International Relations Task Force

With a stubbornness that defies reason and is in direct violation of its own most deeply held free market principles, the European Union (EU) has banned a traditional and relatively safe product in all but one country. The item in question is called snus (pronounced *snoos*) and Sweden is the only EU member state where snus can be produced and sold legally.

Snus is a "pasteurized" product that consists of air-cured tobacco, salt and water. It is considered a "low nitrosamine smokeless tobacco" and a great deal of research suggests that snus may be a safer alternative to cigarettes. It comes in a pouch that is placed between the upper lip and gum and has been a traditional Swedish product since the mid 1800s.

Under pressure from tobacco control advocates, the EU originally banned snus citing public health concerns and arguing that snus could increase the risk for oral cancer, was addictive and was a gateway to other tobacco products. However, numerous studies, including many commissioned by the EU itself, have refuted these original arguments. The results of further research are so compelling that the EU eliminated the "Causes Cancer" warning on snus packages. Findings from a study conducted by the EU's Scientific Committee (SCENIHR) and published in February 2008 concluded:

- Snus use is significantly less harmful to health than smoking;
- No link can be found between snus and oral cancer;
- Snus is not a gateway to smoking;
- Snus use has been *beneficial* to Swedish public health; and
- *Snus can help smokers quit smoking.*

In fact, snus has been shown to be more effective in smoking reduction and cessation than nicotine chewing gum or nicotine replacement therapy, and Swedish public health statistics among males (the primary users of snus) confirm these conclusions. Sweden, which boasts one million daily snus users, has the highest rate in the EU of people who have successfully reduced cigarette consumption or quit altogether. Sweden also has the lowest EU smoking rates among its male population, and Swedish men have the lowest rates of diseases commonly associated with tobacco use in the European Union.

International commerce is far too interconnected and our trade with Europe far too extensive for this ban not to effect U.S. companies and American citizens adversely. In an effort to offer safer alternatives to cigarettes, several American companies such as RJ Reynolds and Altria have developed their own snus products. The EU's ban (which also covers other smokeless tobacco products such as U.S. snuff) effectively excludes these American products from a significant market affecting not only the companies but American tobacco growers as well. Sixty percent of American-raised tobacco is exported and tobacco is being grown in an ever increasing number of states, inextricably linking our tobacco farmers' economic fortunes to those of foreign-based firms. Further, political links between nations have paralleled economic ones. And bad policy originating abroad often migrates to our shores —the fervor surrounding climate change provides us with an excellent example of bad policy metastasis. Globalization has made economic and political isolation impossible, so it is in our best interest to join with our like-minded international partners in opposing bad ideas and supporting good ones.

Snus is the only commodity that is lawfully produced, sold and consumed in an EU member state and exported worldwide but cannot be legally sold anywhere else in the EU. The European Commission (EC) has failed to demonstrate why the snus ban is reasonable in light of its role as the EU guardian of free trade and member state equal right of access. The European Union's snus ban is inconsistent with its founding principles—the Four Freedoms—which call for free movement of goods; capital; services and persons within the EU, violates the EU's competitive market laws and is highly and unfairly discriminatory. It is time for reason to prevail and time for the EU to lift its misguided ban on snus. The evidence clearly shows that there is no justifiable health reason to keep the snus ban in place. The EU should let the facts, not political pressure, inform their policy on snus. ■

Regulations that Miss the Target

The Need for Reform of the Export Control System

BY MARION C. BLAKEY

Whether you tend toward the glass-half-empty or glass-half-full view of our sputtering economy, there's ample evidence to support either position. One contention that's not in dispute, however, is the vital importance of international trade to economic health. Manufacturers, especially those involved in the aerospace and defense industry, rely heavily on global trade—for the simple reason that the United States is a consistent winner in that arena. Overall, aerospace trade contributed a positive balance of $56 billion to U.S. trade in 2009—the largest of any manufacturing sector.

A robust export market for U.S. aerospace products is critical for the industry's continued well-being. As domestic defense spending slows over the next few years—as dictated in part by the Defense Department's budget strictures and its efficiency initiative—military aircraft exports will represent an increasingly important source of business for the U.S. aerospace industry. Major U.S. defense companies are trying to expand their international sales opportunities anywhere from 6 to 10 percent in the next five years.

A trade system that allows our manufacturers to compete makes the international marketplace viable. Barriers to marketplace success are little known outside of Washington, D.C., but they impact virtually every company involved in defense work.

We're talking about export controls.

Export controls are the means by which the U.S. government reviews and approves the export of military items to ensure the export is consistent with the national security and foreign policy interests of the United States. It's a reasonable proposition and industry supports these logical objectives. What isn't logical is the way it actually operates. As a result, there is an equal or greater national security concern when we cannot get technology across our borders in support of the war fighter and our closest allies on the battlefield.

In other words, the system we have of obtaining licenses that was mainly designed to prevent technology from getting into the wrong hands is actually keeping technology out of the right hands. The longstanding inconsisten-

cies in license decisions have damaged our relationships with allies and trading partners and impeded efforts to strengthen military and economic cooperation. Moreover, small businesses have been hurt. Companies not only face delays and unpredictability in the licensing process, but they are confused by the rules and frustrated by the costs of trying to navigate the system.

Here are some important facts supporting export control modernization:

- Defense exports to partner countries help sustain and expand political and military cooperation. Higher levels of technology exchange with close allies enable their self-defense, defense of our common interests and ensure interoperability with our military.

- By engaging in technology exports to and imports from a global supply chain, U.S. defense companies are able to combine the best technology options from around the world to provide the best for the American war fighter at the best price for the American taxpayer.

- The U.S. enjoyed a $9.2 billion trade surplus in defense equipment last year, with $14.2 billion in exports supporting 818,000 high-skill, high-wage U.S. jobs.

$9.2 BILLION:
U.S. trade surplus in defense equipment in 2009

- The multiple steps to evaluate the release of U.S. technology overseas by the Defense Department and subsequent lengthy interagency review and approval of defense export licenses are not optimized for predictability, efficiency or transparency. A lack of precision and flexibility on what and how something needs to be controlled create avoidable costs and delays for industry.

- Small- and medium-sized companies typically lack the resources and the confidence to navigate the complexity of the U.S. export control system or pay a high price for the expertise to do so. As a result, some companies simply avoid seeking export opportunities.

The last point bears repeating: small businesses suffer disproportionately. Kenneth Bram, president of Ausco, Inc. in Port Washington, N.Y., a modest-sized firm that makes valves for use in aerospace, told AIA about his efforts to obtain a license for a valve being exported to the UK. Bram said it took him three tries and $7,500 to obtain the license, eating into his profit on a fixed price contract. "So now we're turning down business—millions of dollars of business," Bram said. "But how many battles can I fight? You go through all that work to make almost no money."

The Obama administration is trying to revamp the system. Recently, they started a thorough review of the U.S. Munitions List (USML). The restructured list shows great promise in assigning the appropriate level of protection to technology exports across all levels of risk. For example, a review of one category of the USML—tanks and military vehicles—revealed that about 74 percent of the 12,000 items licensed last year could have been safely processed under the less restrictive Commerce Control List or should not have required licensing at all. This indicates substantial potential savings in time and compliance costs to U.S. exporters in the future, with enormous benefits for our military and closest allies.

Congress is potentially both an ally and an obstacle. Members of the House and Senate need to be convinced that this is more than just a large company problem. They need to be persuaded that USML controls don't just cover full blown F-16s but also nuts, screws, bolts, hoses, boxes and, yes, valves. The Senate took a step forward at the end of September by ratifying the U.S.-UK and U.S.-Australia Defense Trade Cooperation Treaties. These pacts will streamline the licensing system for defense exports to these staunch allies. But congressional approval of full modernization of the export control regime is still far from a sure thing.

State legislators can help. The best strategy is to be informed on the issue and be vocal about it. At the end of the day, the small businesses in your towns and communities cannot afford to press their case. They're too busy fighting for their business lives to go to Capitol Hill and spend valuable time attempting to explain to a member of Congress that their particular widget is being unnecessarily burdened. Yet if enough attention can be drawn to the problem there's a better chance of a chorus of voices being heard and making an impact.

National security depends in large part on a healthy economy. The aerospace industry is counting on reform that lets us put the right technology in the right hands. ■

Marion C. Blakey is president and CEO of the Aerospace Industries Association. In 2007, she completed a five-year term as head of the Federal Aviation Administration.

Intellectual Property

Protecting America's Most Valuable Asset

BY GINA VETERE

From the invention of the automobile to the creation of the Internet to the recent innovations of two Pennsylvania companies that helped lead to the rescue of 33 Chilean miners, America's history is rooted in big ideas. Innovation and ingenuity are the engines of America's economic growth and competitiveness and a source of national pride. America has been a leader in technological progress since at least the 19th century, where innovations in manufacturing spurred unprecedented economic growth. For the U.S. to continue to lead in today's knowledge-driven economy, America's innovations must be rewarded and protected.

Intellectual property (IP) is the driving-force behind innovation and is our most valuable trade asset. America's intellectual property is valued at between $5 and $5.5 trillion, which is more than the nominal gross domestic product of any other country. Additionally, the colossal economic forces that are the IP-intensive industries—from healthcare and clean energy to entertainment and software—account for approximately 60 percent of total U.S. exports and employ more than 18 million Americans.

Today, America's entrepreneurs, businesses and workers are not simply trying to produce the best product—they are investing time and energy in research and development to improve the marketplace of ideas by making things more efficient, simpler, and more effective for consumers around the world. Intellectual property enforcement incentivizes innovation while protecting investments in research and development from being hijacked or encroached upon by IP theft.

The value of innovation can be found in every corner of the country, and every state and community plays a role in helping America grow and remain competitive. For instance, California is home to the heart of American entertainment, Hollywood, which contributes $9.4 billion to America's international trade, and employs 1.3 million people. The software industry alone employs more than 41,000 Californians, totaling over $5 billion in wages. Similarly in New Jersey, tech industry jobs pay on average $89,400—74 percent more than the state's average private sector wage. Illinois is home to 18 Entrepreneurship Centers—providing $3.9 million in challenge grants that have helped more than 706 high-growth, innovative startup companies secure more than $389 million in financing.

The U.S. Chamber of Commerce's Global Intellectual Property Center (GIPC) is dedicated to protecting and promoting the ideas and ingenuity that drive job creation, economic growth and America's competitiveness. Sound IP policies in the U.S. and abroad are essential to advancing economic development, creating high-quality American jobs, and providing assurances to consumers that the products they use are authentic, safe and effective.

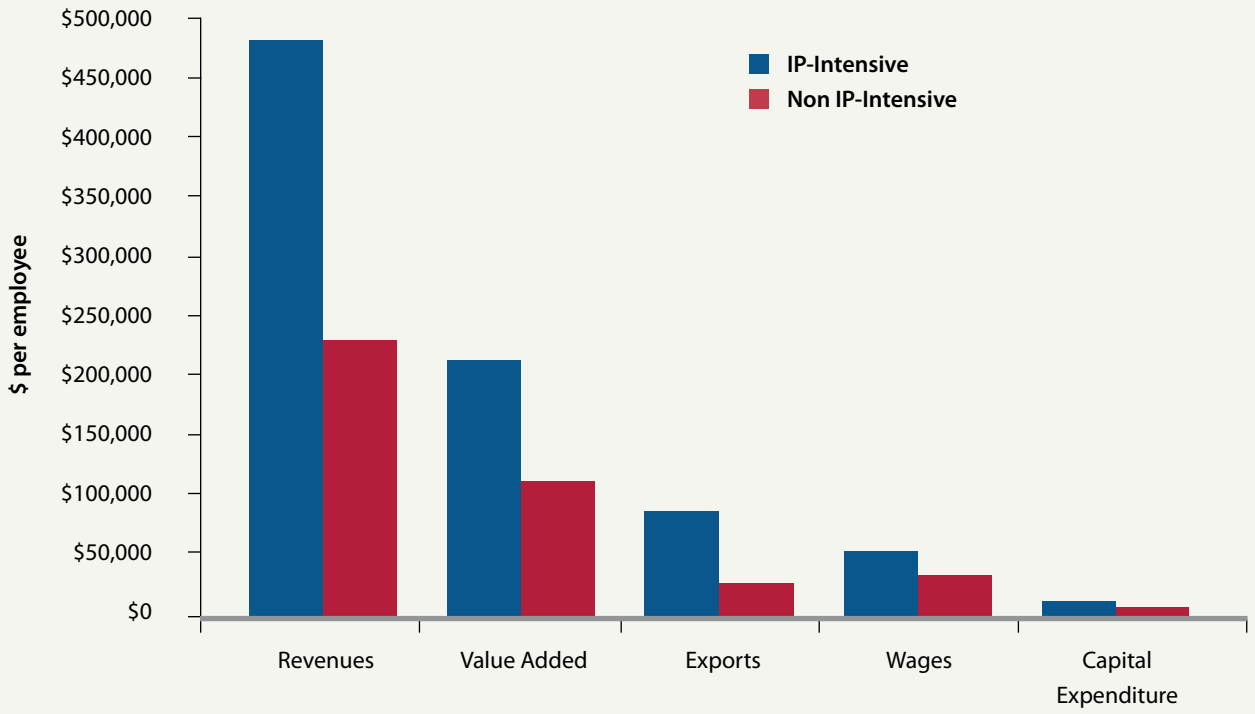
However, the jobs supported by America's IP-intensive industries are coming under attack by counterfeiters and pirates and other forms of IP theft. According to the Organisation for Economic Co-Operation and Development, the global impact of counterfeiting and piracy on tangible goods was estimated to be as high as $250 billion in 2007 and is growing annually. This problem is exacerbated further as more and more goods are sold online.

Gina Vetere is senior director for intellectual property promotion for the Global Intellectual Property Center at the U.S. Chamber of Commerce. www.theglobalIPcenter.com

Fortunately, the Administration recognizes this growing problem and has taken numerous steps to address it. In June 2010, the Obama administration released the first-ever national IP enforcement strategy to coordinate all IP enforcement efforts across the Administration. Additionally, in September, Senators Patrick Leahy (D-VT) and Orrin Hatch (R-UT)—with 15 other Senators as co-sponsors, introduced a bipartisan bill, the *Combating Online Infringement and Counterfeit Act*, to shut down the worst of the websites that are dedicated to selling counterfeit goods and/or pirating copyrighted materials.

In today's global economy, where more than 95 percent of the world's customers live outside of the United States,

"The Impact of Innovation and the Role of Intellectual Property Rights on U.S. Productivity, Competitiveness, Jobs, Wages, and Exports," NDP Consulting, 2010.



it is essential that we find ways to continue to protect new ideas in the global marketplace. For example, it is important that the U.S. government negotiate and implement trade agreements with strong IP provisions that protect America's creations and innovations. The U.S. Congress has an opportunity to advance this objective by approving the U.S.-Korea Free Trade Agreement, which contains robust IP protection and enforcement standards that should serve as a model for any future trade agreements. This Administration also has an opportunity to open up the international marketplace even further to America's ideas by negotiating gold standard IP protection and enforcement provisions as part of the regional Asia-Pacific trade agreement known as the Trans-Pacific Partnership (TPP) Agreement. Such provisions are key ingredients to ensuring the development of new technologies and the success of America's continued competitiveness.

America's innovators are also threatened by inadequate IP protection and enforcement in a number of key markets, including China, India, Brazil and Russia. China, for example, is a leading source of physical and digital counterfeit and pirated goods worldwide. According to the U.S. Customs and Border Protection, seizures of IP infringement products originating from China had a domestic value of approximately $205 million, accounting for 79 percent of the total value seized. At the same time, the Chinese government is also continuing to promulgate measures governing critical industry sectors that undermine the value of American- and foreign-held intellectual property, including via forced technology transfer. In India, the government has engaged in efforts to promote its domestic generics industry by enacting policies which discriminate against valuable pharmaceutical innovation. Additionally, the Indian Ministry of Commerce and Industry has recently proposed broad compulsory licensing policies, suggesting that the government expropriate valuable technology rather than pay for it. U.S. policymakers at the federal and state level should use all levers and opportunities to engage key trading partners in improving their IP regimes.

It does little good for America's students, engineers, researchers and entrepreneurs to develop big ideas only to see these ideas copycatted or stolen. If America is to remain the world's leading innovator, strong IP protection and enforcement policies must be a cornerstone of our country's economic and foreign policy agenda. State legislators can play a key role in elevating IP issues to the highest levels of public awareness and political attention, thereby helping to foster an environment in which American investors, entrepreneurs, creators, and innovators will feel secure that their ideas will be rewarded and their investments recouped. ■

"The coal industry and the electric power industry have a vision of the ability to use coal with near-zero emissions. And we're on a path to get there."

Dan should know. He's part of an international effort working toward the successful capture and storage of CO_2 on a large commercial scale. The technology, called carbon capture and storage (CCS), will allow us to continue using coal, one of our most abundant and affordable fuels, in an even more environmentally responsible way. And power plants using natural gas will also need to employ CCS to meet stringent CO_2-reduction goals.

As Dan is quick to point out, we are making progress toward that goal.

"We have technologies today that can capture CO_2, and we have coal-fired power plants that already capture and store CO_2 emissions. We can store carbon dioxide underground and do it in a safe way.

"I am confident, based on the number of scientists and engineers around the world working on this solution, that we can get there. That is what my job is all about."

Dan agrees that driving down the cost of capturing and storing CO_2 on a widespread basis is the next task. And with people like Dan leading the way, we will succeed.

To learn more about Dan and his work on building a clean and affordable energy future, visit americaspower.org.

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Daniel Connell
Engineer/Project Manager
CONSOL Energy – Pittsburgh, Pennsylvania

American Legislative Exchange Council

1101 Vermont Ave., NW, 11th Floor
Washington, D.C. 20005
www.alec.org

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